

In The Matter Of:
Bobby Lewis, and Michael Del Vecchio v.
Alabama Department of Environmental Management

Vol. II
June 1, 2016

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1 BEFORE THE
2 ALABAMA ENVIRONMENTAL MANAGEMENT
3 COMMISSION

4 BOBBY LEWIS and MICHAEL DEL
5 VECCHIO,
6 Petitioners,
7 v. DOCKET NO. 16-01
8 ALABAMA DEPARTMENT OF
9 ENVIRONMENTAL MANAGEMENT, SOLIDWASTE DISPOSAL
 Respondent, FACILITY PERMIT
 No. 35-06

10 CITY OF DOTHAN, ALABAMA,
11 Intervenor.

12
13 * * * * * * * *
14 Volume II of the hearing for the
15 above-styled action was taken before Patrick R.
16 Miller, Alabama Certified Court Reporter,
17 No. 2037, as Commissioner, on Wednesday, June
18 1st, 2016, commencing at approximately
19 9:00 a.m., at the Alabama Department of
20 Environmental Management, in the Alabama Room,
21 1400 Coliseum Boulevard, Montgomery, Alabama.
22
23

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1 * * * * * * * *
2 APPEARANCES

3

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5

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2 APPEARANCES (continued)

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13 Also Present:

14 Mr. Bobby Lewis
15 Mr. Michael Del Vecchio
16 Mr. Phillip D. Davis, PE
17 Mr. Daniel Wells, PE

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1	* * * * *	
2	HEARING OFFICER: Okay. Gentlemen,	
3	we are back on the record and ready	
4	for Day Two of our procedure required.	
5	I believe it is still the Petitioners'	
6	case.	
7	Mr. Ludder, are you ready for your	
8	next witness?	
9	MR. LUDDER: I am. The Petitioners	
10	call Scott Story.	
11	HEARING OFFICER: All right. If	
12	you will raise your right hand, the	
13	court reporter will swear you in.	
14	(The Witness was duly sworn.)	
15	HEARING OFFICER: Mr. Ludder, does	
16	that work for you? Want me to move	
17	him further back?	
18	MR. LUDDER: No, no, that's good.	
19	That's fine.	
20	DIRECT EXAMINATION	
21	BY MR. LUDDER:	
22	Q. Would you please state your name?	
23	A. Stephen Scott Story.	

		Page 342
1	Q. And where are you employed?	
2	A. Alabama Department of	
3	Environmental Management.	
4	Q. And in what Division?	
5	A. Land Division.	
6	Q. And is there a branch in the Land	
7	Division that you're employed in?	
8	A. Yes. Solid Waste Branch.	
9	Q. What's your position in the Solid	
10	Waste Branch?	
11	A. I am Chief of the Solid Waste	
12	Engineering Section.	
13	MR. LUDDER: Okay. Can you hear	
14	him okay?	
15	HEARING OFFICER: It's a little	
16	better. My plan didn't work out that	
17	well.	
18	THE WITNESS: Want me to speak up?	
19	HEARING OFFICER: Speak up, please.	
20	THE WITNESS: Okay. I'll try.	
21	Thank you.	
22	BY MR. LUDDER:	
23	Q. I'm sorry. You said you were	

		Page 343
1	Chief of the --	
2	A. Solid Waste Engineering Section.	
3	Q. Engineering Section?	
4	A. Yes.	
5	Q. Okay. Are you a professional	
6	engineer?	
7	A. Yes, sir.	
8	Q. And how long have you been in the	
9	Solid Waste Section -- or Solid Waste Branch, I	
10	should say?	
11	A. Seven years. Seven or eight	
12	years, something like that.	
13	Q. Okay. And what are your	
14	responsibilities?	
15	A. I supervise a number of employees.	
16	Right now, it's five, I guess, that are project	
17	engineers that -- we write the permits for all	
18	the landfills in the state. Among that, we also	
19	do solid waste management plans, review and do	
20	those; compost facilities; we do a little	
21	operator certification, work with -- work with	
22	that group. So there's a few things we do there	
23	besides just writing permits, reviewing and	

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1 writing permit applications.
2 Q. Okay. How closely do you
3 supervise the work of those under you with
4 regard to landfill permits?
5 A. Okay. It depends on who it is.
6 If we got somebody brand-new, then -- you know,
7 then we're really looking over their shoulder
8 making sure they know what they're doing, and
9 maybe even doing a peer review, stuff like that,
10 you know, getting somebody else to look at it.
11 But if it's one of my engineers who's been here
12 18 years or so, I'd say he pretty much knows,
13 you know, what he's doing. And so -- actually,
14 all of my engineers right now are senior
15 engineers. They've been here five years plus, I
16 guess. And so typically, they have shown, you
17 know -- and, you know, that they can handle
18 writing permits and -- reviewing the application
19 and writing the permits.
20 Q. Now, are you familiar with the
21 permit application that was submitted by the
22 City of Dothan for expansion of their landfill?
23 A. Yes, sir.

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1 Q. And how did you become familiar
2 with that?
3 A. Anytime a mod comes in, it usually
4 comes in straight to me. When the application
5 comes in, it comes into me, and so I see it, and
6 I know that it's not -- you know, usually the
7 simple renewals are the ones that I don't really
8 worry too much about, but any kind of
9 modification or greenfield, or, you know, a
10 brand-new permit or something like that, then
11 I'll -- it catches my attention, I'll put it
12 that way. And so I was also aware of this one.
13 Yes.
14 Q. And then you would assign it to
15 one of your staff?
16 A. Correct. They're broken up into
17 areas.
18 Q. I'm sorry. They're what?
19 A. They're broken up into areas of
20 the state.
21 Q. The staff are -- the staff are
22 broken up?
23 A. Yeah, it's in somebody's area.

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1 It's in Jared Kelly's area.
2 Q. Okay. And do you review the
3 application any -- at any time after you sign it
4 to Jared -- to Jared Kelly?
5 A. Not typically, but I can. If
6 there's something that comes up, we've got a
7 question about something, or -- or maybe
8 something technically looks wrong or
9 something -- he's got a question on something,
10 and we'll dig around in it. But, typically, the
11 engineer is the -- the project engineer is the
12 one who looks at the application.
13 Q. And do you recall having spent any
14 time -- after you assigned this application to
15 Jared Kelly, do you recall having spent any time
16 reviewing the application?
17 A. Not before we got to the -- to the
18 draft permit, but after -- when we -- when the
19 draft permit came to me to look at, there was a
20 couple of questions and -- to remember -- I'm
21 not -- I didn't open the whole application, but
22 a couple of questions about this or that, and we
23 went back and looked at it and saw it. But

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1 prior to that, no. I didn't look at the
2 application.
3 Q. And did you discuss parts of the
4 application with Jared Kelly?
5 A. I would have, yes.
6 Q. Okay. You don't recall what
7 parts?
8 A. No, sir. I don't recall exactly
9 what they were.
10 Q. Do you recall what questions you
11 have in regard to the draft permit?
12 A. I think it's actually he came into
13 me and mentioned about the slope stuff and just
14 had questions about that. And I think that
15 was -- that was really the only question that we
16 had about it.
17 Q. Okay. And other than the slope
18 discussion, or the slope question that he had,
19 did you find the remainder of the draft permit
20 satisfactory?
21 A. Yes, sir. I believe I did.
22 Q. Okay. Are you familiar with the
23 Department's rules, I assume, on the standards

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1 that have to be met for a solid waste landfill?

2 A. Yes, sir.

3 Q. Okay.

4 A. I know where to find them. I'll

5 put it that way.

6 Q. I'm sorry?

7 A. I know where to find them.

8 Q. Right, right. Let me show

9 you -- it's an exhibit up here. Let me show you

10 what's been marked as Exhibit P-6. Are those

11 some of the rules that govern solid waste

12 landfills?

13 A. Yes, sir, they are.

14 Q. And in P-6, are there requirements

15 in there for both municipal solid waste

16 landfills and construction and demolition

17 landfills?

18 A. Correct.

19 Q. Okay. If you would, turn to Rule

20 335-13-4-.01.

21 A. Okay.

22 Q. Did you find that?

23 A. Yes, sir.

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1 Q. Okay. What is that rule about?

2 A. Landfill Unit Siting Standards.

3 Q. Did you author that rule?

4 A. No, sir, I did not.

5 Q. Was it in existence before you

6 started work in the Solid Waste Branch?

7 A. Yes, sir.

8 Q. Are you aware of any written

9 guidance on how to apply the rule that existed

10 before ADEM issued public notice on the Dothan

11 landfill?

12 A. Could you say that one more time?

13 Q. Yeah. Are you aware of any

14 written guidance on that rule that existed prior

15 to the time that ADEM issued public notice?

16 A. No, sir. I'm not.

17 Q. Are you aware of any written

18 policies on how to implement that rule that

19 existed before ADEM went -- notice on the Dothan

20 landfill?

21 A. No, sir.

22 Q. Are you aware of any written

23 interpretations of that rule that existed before

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1 ADEM issued public notice on the Dothan

2 landfill?

3 A. No, sir.

4 Q. Now, that rule specifies that some

5 information has to be provided in the

6 application, correct?

7 A. Yes, sir.

8 Q. And would you turn to Paragraph

9 (2), which is titled, Water Quality Standards?

10 A. Okay.

11 Q. Before we -- and if you will, look

12 at Subparagraph (c) in that paragraph.

13 A. Okay.

14 Q. And does that Subparagraph (c)

15 deal, at least partially, with wetlands?

16 A. Yes, sir.

17 Q. And look at Subparagraph (a).

18 Does that deal with partially with waters -- or

19 I should say, does it deal with waters of the

20 State, including wetlands?

21 A. Yes, sir.

22 Q. All right. In front of you are

23 two exhibit books that we'll be referring to

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1 periodically during your testimony. If you

2 would, I'm going to direct your attention to

3 Joint Exhibit Number 3, Part II, and do you

4 recognize that document?

5 A. Yes, sir.

6 Q. Is that part of the permit

7 application that the City of Dothan submitted to

8 ADEM?

9 A. I believe it is. Yes, sir.

10 Q. Okay. Would you -- turn, if you

11 would, to Section 2.1 in that exhibit.

12 A. I see 2.0.

13 Q. It should be 2. -- are you on Page

14 2-1?

15 A. I'm on Page 2. Unless it's on the

16 back here. If you look at it, here's -- here's

17 the front page. Here's that, here's 2.0, Page

18 2, and it goes to 3.0. I don't know if it's

19 somewhere further back. It seems like the

20 numbers would get bigger.

21 Q. I think maybe we're looking at the

22 wrong one.

23 A. Wrong one?

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1 Q. Yeah, that's the static stability
2 analysis. Wrong one.
3 A. Okay. Okay. I did recognize it
4 though.
5 Q. Yeah, good. All right. Let me
6 refer you now to Exhibit -- Joint Exhibit Number
7 3, Part I. And now ask you if you can find
8 Section 2.1.
9 A. I think I've found it this time.
10 Q. Now, is that document, Joint
11 Exhibit Number 3, Part I, is that part of the
12 permit application the City of Dothan submitted
13 to ADEM for this landfill?
14 A. Yes, sir, I believe it is.
15 Q. Okay. Would you read the first
16 sentence in Section 2.1?
17 A. All right. 2.1 is Wetlands
18 Assessment. And it says, ADEM Administrative
19 Code 335-13-4-.01(2) prohibits municipal solid
20 waste landfills in wetlands or any location
21 where the disposal of solid waste would degrade
22 wetlands.
23 Q. And would you read the last

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1 sentence in that section?
2 A. Wetlands that are found within the
3 proposed footprint of the landfill will be
4 avoided until all required permitting is
5 obtained.
6 Q. All right. And do you know if a
7 wetlands assessment was provided?
8 A. For -- as far as the application?
9 Is that what you're saying?
10 Q. Yes.
11 A. Yes, sir. I believe -- I believe
12 it was.
13 Q. Okay. Are you familiar with that
14 wetlands assessment?
15 A. That we got it, yeah. That's
16 about the extent of it.
17 Q. Okay. Do you know if there are
18 wetlands within the footprint of the proposed
19 landfill expansion?
20 A. I know the plans indicate that
21 there are -- there are.
22 HEARING OFFICER: A little louder,
23 Mr. Story.

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1 THE WITNESS: Oh, the plans
2 indicate that there are. I haven't
3 gone up there and looked at it.
4 BY MR LUDDER:
5 Q. And do you know that there are
6 streams, or waters of the State, within the
7 footprint of the landfill expansion?
8 MR. WHITE: Objection.
9 HEARING OFFICER: Overruled.
10 A. If a wetland is a water of the
11 State, then I guess so. I'm not sure if there
12 is a stream flowing through there or not, but
13 there very well could be.
14 Q. Okay. Have you -- well, did you
15 review any of the drawings in your -- in your --
16 A. I have looked through the
17 drawings, yes, sir.
18 Q. You have? Let me show you what's
19 been marked as Exhibit P-5. Have you seen this
20 drawing before?
21 A. Yes, sir. Not this big, but I
22 have seen it.
23 Q. Not what?

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1 A. This big.
2 Q. Oh, not this big? Okay. Have you
3 seen it in color before?
4 A. I don't think so.
5 Q. Okay. Can you find the proposed
6 landfill expansion on that diagram?
7 A. It's right here.
8 Q. And you're pointing to a green
9 section?
10 A. Oh, do I have to describe it? I'm
11 pointing at the green section of this map right
12 here. It says, Proposed MSW Landfill Expansion.
13 Q. Okay. We've had some argument
14 about what color that is, so...
15 HEARING OFFICER: It's green.
16 MR. LUDDER: It's green. It's
17 officially green.
18 THE WITNESS: Okay.
19 BY MR. LUDDER:
20 Q. And the existing landfill, is that
21 the section above to the north of the expansion
22 that's colored pink?
23 A. Yes, sir, it is.

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<p>1 Q. Do you know if that existing 2 landfill is currently accepting any waste? 3 A. Yes, sir, it is. 4 Q. It is? Okay. Do you know if 5 they -- if the amount of waste -- 6 A. Can I -- 7 Q. Sure. 8 A. As in currently -- I mean, as of 9 this moment? Or, I mean, in the past few 10 months, it has accepted some waste. Is that 11 a -- a answer -- an answer? 12 Q. Sure. Do you know anymore 13 recently than that? 14 A. I don't. I haven't been out 15 there, and, you know, I've -- I haven't done a 16 site -- you know -- visit, and I haven't looked 17 through their waste -- you know, load stuff, 18 so... 19 Q. Okay. So the last time you recall 20 is within the last few months? 21 A. I would venture to say they 22 probably are accepting waste, yes, but I don't 23 know for sure. They might be completely full.</p>	<p>1 also -- you testified a moment ago about 2 wetlands being within the footprint of the 3 landfill expansion. Do you know approximately 4 in this diagram where those wetlands might be? 5 A. Yes. I believe they're in this 6 area right here. 7 Q. All right. Now, that the -- 8 A. Do you want me to describe this 9 area? 10 Q. Please. 11 A. The lower portion, I guess it's 12 the southern portion, of the proposed landfill 13 expansion in green. 14 Q. And is the area where you're 15 pointing to, is that shaded differently than the 16 rest of the expansion area? 17 A. Correct. 18 Q. A bit darker? 19 A. Yes, sir. 20 Q. All right. Let's return to 21 Exhibit J-3, Part I, in the book. And if you 22 would, turn to Section 5.1. 23 A. Is it the one that's -- is it in</p>
Page 357	Page 359
<p>1 Q. Okay. Do you know -- well, are 2 they close to being full? 3 A. They've indicated to us that they 4 are close to being full, yes. 5 Q. And do you know if they have 6 reduced the volume of waste that they are 7 disposing of there? 8 A. Yes. 9 Q. Do you know by how much? 10 A. Considerable. I know most of the 11 waste is being sent somewhere else. 12 Q. Do you know if it's being sent to 13 the state of Florida? 14 A. I believe that some of it is 15 going -- MSW is going there, and the C&D is 16 going somewhere else, is -- that's my 17 understanding. 18 Q. Is also going somewhere else, you 19 said? 20 A. That was my understanding. I may 21 be wrong on that. That's just -- that's just 22 what I -- what I think. 23 Q. Okay. So, do you know -- you</p>	<p>1 the operations manual, or are we -- 2 Q. Yes, yes. 3 A. Section what? 4 Q. 5.1. 5 A. All right. 6 Q. Did you find that? 7 A. Well, again, I'm going through it, 8 and I got to 2, and then it gets -- 4 -- and 9 it's -- 5.0's conclusions, and 6 is references. 10 I'm not sure if I'm on the right one. 11 Q. Yeah, it's not -- it's not marked 12 very well. I think that's probably -- that's 13 probably a different part. 14 A. Okay. All right. And you asked 15 for which one? 5.1? 16 Q. 5.1. 17 A. Okay. 18 Q. And that's titled what? 19 A. Water Quality Protection. 20 Q. And would you read the first 21 sentence of that? 22 A. Okay. The water quality 23 protection standards outlined in Rule</p>

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1 335-13-4-.01 prohibit the discharge of
2 pollutants including fill material, or any other
3 unpermitted discharge into [verbatim] waters of
4 the State as defined by the Alabama Water
5 Pollution Control Act, Code of Alabama and the
6 United States Environmental Protection Agency
7 Clean Water Act, as amended.
8 Q. All right. Now, are you aware of
9 any other place in the application where the
10 City of Dothan has addressed discharges into
11 waters of the State?
12 A. I wouldn't -- I mean, no. I mean,
13 I'm not. There may be some more in there, but
14 I'm not.
15 Q. Okay. In your -- in exercising
16 your supervisory responsibilities, and -- over
17 this application and its disposition, did you
18 make any effort to determine whether any state
19 permits had been issued for discharges to waters
20 of the State?
21 A. Ask it one more time.
22 Q. Yeah. In your -- in your function
23 as a supervisor, did you make any inquiry as to

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1 whether discharges to waters of the State were
2 permitted by ADEM?
3 A. I don't -- I don't think I
4 made -- what was your -- what was the very first
5 part of your sentence, what was it again? I
6 make -- you asked me did I do something.
7 Q. Did you make an inquiry?
8 A. Did I make inquiry? I don't think
9 I made an inquiry. I think it was -- I
10 think -- I-saw-that-it-had-been-handled kind of
11 thing.
12 Q. All right. Could you describe how
13 it had been handled?
14 A. Yeah, I think we had the -- and
15 I'm not the water expert; you know, I'll say
16 that right off the bat -- but I thought we had
17 had all of the boxes checked, I guess, on what
18 we were looking at, in making sure we had
19 the -- whether we had the -- the
20 401CB -- whatever-it-is permit in place for
21 the -- for the filling in of the wetland, and
22 then the NPDES permit had been modified too, for
23 the expansion, I guess you'd say. So I thought

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1 we had checked all our bases.
2 Q. Now, when you talk about the NPDES
3 permit, do you know where the discharges would
4 be located for that permit?
5 A. Not off the top of my head.
6 That -- the water program would -- you know,
7 they had an inspector, and they've got the
8 permitting process, and they're the ones that do
9 that.
10 Q. All right. So you don't --
11 A. So if it's good with them, we're
12 not going to overrule what they think, what the
13 correct way to do it is.
14 Q. So do you know if the NPDES permit
15 addresses discharges into wetlands or streams?
16 Let me withdraw that.
17 Do you know if the NPDES permit addresses
18 discharges into wetlands?
19 A. I think it's for discharges into
20 water of the State. I think wetlands are water
21 of the State.
22 HEARING OFFICER: A little louder,
23 Mr. Story.

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1 A. I'm sorry. I think that wetlands
2 are water of the State. And I would think that
3 NPDES permits -- again, it's not my
4 program -- but would -- would cover that.
5 Q. Okay. And I guess you're saying
6 that the people in the water program in the
7 Department would know better?
8 A. Yes, sir. Yes, sir. That's
9 correct.
10 Q. Okay. Would you turn now to
11 Section 5 -- I'm sorry -- 5.4?
12 A. Same thing? Operations manual?
13 Q. Same operations manual, yes, sir.
14 A. Okay.
15 MR. SASSER: 5. -- what? I'm
16 sorry.
17 MR. LUDDER: 5.4.
18 BY MR. LUDDER:
19 Q. What's the title of that section?
20 A. Stormwater Runoff Control.
21 Q. All right. And would you read the
22 last sentence?
23 A. Additional measures will be put in

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1 place --

2 Q. I'm sorry.

3 A. Is that not right?

4 Q. The last sentence of the first

5 paragraph.

6 A. Oh, okay. I'm sorry.

7 Runoff from the active and/or closed

8 portions of the landfill shall be routed to a

9 sediment control structure prior to release onto

10 adjacent properties or waters.

11 Q. And the last sentence in Paragraph

12 2?

13 A. The stormwater will pass through

14 the sedimentation pond prior to discharging off

15 site.

16 Q. All right. Now, let's refer to

17 Exhibit P-5, Sheet Number 3. The page that's

18 marked, Base Grading Plan.

19 A. Okay.

20 Q. Do you see sedimentation ponds on

21 that diagram?

22 A. Yes, 1 and 2. Sediment Pond

23 Number 1 and 2.

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1 Q. And what about this one?

2 A. Oh, okay. I'm sorry. And -- and

3 3.

4 Q. Okay. So you see three sediment

5 ponds?

6 A. Correct.

7 Q. And do you know what -- what's the

8 function of those sediment ponds?

9 A. To -- well, generally, they're to

10 control runoff from the active area, I guess.

11 Control sediment from leaving the site.

12 Q. Okay. So if there's an active

13 area anywhere in the footprint of the expansion,

14 is it the intention to have it flow into one of

15 these sediment ponds -- excuse me.

16 Is it the intention to have stormwater from

17 that active area flow into one of these sediment

18 ponds?

19 A. Correct. Or just not let it flow

20 off-site. I guess you'd slow it down before it

21 goes off-site.

22 Q. Control it?

23 A. Yeah. Yes, sir.

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1 Q. And does each of those sediment

2 ponds have a discharge structure of some kind?

3 A. It's got an outlet structure, an

4 overflow spillway.

5 Q. I'm sorry. You said "outlet

6 structure"?

7 A. Pond outlet structure. It looks

8 like that one is flowing into this one, and then

9 that one's got an outlet.

10 Q. All right. Let's --

11 A. It's got an overflow spillway. I

12 guess they're all routed to 3, maybe.

13 Q. All right. Let's clarify that.

14 You're saying Sediment Pond Number 1 is

15 connected to Sediment Pond Number 2?

16 A. Correct.

17 Q. So that --

18 A. And then it -- go ahead.

19 Q. So that the waters collected in

20 Sediment Pond Number 1 can flow into Sediment

21 Pond Number 2?

22 A. Without looking at the grading, I

23 suppose it's going from 1 to 2. I'm

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1 saying -- it could be going from 2 to 1, but I'm

2 guessing it's going that way.

3 Q. Going from 1 to 2?

4 A. Yeah.

5 Q. And there is a -- something

6 labeled, Overflow Spillway, between Sediment

7 Pond Number 1 and Sediment Pond Number 2. Do

8 you know how that would function?

9 A. I do not.

10 Q. Okay. And in Sediment Pond Number

11 2, there is a point in the pond that's labeled,

12 Pond Outlet Structure. Do you see that?

13 A. I do.

14 Q. Do you know how that would

15 function?

16 A. I do not.

17 Q. The diagram also shows, Overflow

18 Spillway --

19 A. Right.

20 Q. -- which looks like it's at the

21 western end of Sediment Pond Number 2. Do you

22 see that?

23 A. Yes, sir.

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1 Q. Do you know how that would
2 function?
3 A. How about not specifically? I
4 generally know how spillways work, but not
5 this -- you know, I just see it listed on the
6 map right now.
7 Q. Yeah. And associated with
8 Sediment Pond Number 3, there is a point marked,
9 Overflow Spillway?
10 A. Correct.
11 Q. Do you know how that would
12 function there?
13 A. Again, same as before, same answer
14 as before, I guess.
15 Q. Which was?
16 A. I don't exactly know how.
17 Q. Okay, okay. Do you know
18 if -- if these ponds would discharge only
19 by -- only by way of the overflow spillways?
20 MR. CARTER: Judge, I want to
21 object. I think we've asked and
22 answered this. He's answered, but
23 he's not the expert on the NPDES

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1 permit, and all this will be covered
2 by that.
3 HEARING OFFICER: Well, he's just
4 trying to get -- make his point, so I
5 don't think this maybe -- I'm not sure
6 this is a witness to prove all this.
7 Is there another one available?
8 MR. LUDDER: Well, I'm not sure
9 that the NPDES witnesses know about
10 this.
11 HEARING OFFICER: Okay. Then go
12 ahead.
13 MR. LUDDER: Okay.
14 BY MR. LUDDER:
15 Q. So the question is -- I'll revise
16 the question.
17 Do you know how these sediment ponds will
18 discharge, if at all?
19 A. I can't say I know how.
20 Q. Okay.
21 A. If you ask, I could speculate, but
22 I don't think it's what you want.
23 Q. Well, if you were reading this

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1 plan -- and you're an engineer, right?
2 A. Yes, sir.
3 Q. If you were reading this plan,
4 what would be your opinion as to how it would
5 discharge?
6 A. I think -- okay. I think,
7 personally, that as this pond filled up, it
8 would overflow into 2, and as 2 filled up, it
9 would overflow into 3, and as 3 filled up, it
10 would overflow and go out the -- and it appears
11 there's probably going to be a permit -- that's
12 probably where the NPDES outfall is, is where
13 that one overflows to, is typically how
14 they -- how it works.
15 Q. All right. So what you're
16 speculating about, or your opinion is --
17 A. Yes.
18 Q. -- that this overflow spillway
19 associated with Pond 3 may be an NPDES-permitted
20 outfall?
21 A. That's -- well, it would -- it
22 would probably lead to one wherever the outfall
23 is.

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1 Q. Okay, okay.
2 A. That's just from five minutes of
3 looking over this -- the map. That's what I
4 think it would be.
5 Q. Okay. Would you turn now to -- in
6 the operations manual, which is Exhibit J-3 Part
7 I -- turn to Appendix 2.1, if you could.
8 A. Oh, my goodness. I'm guessing
9 it's at the back of it.
10 Q. Pardon me?
11 A. I'm guessing it's at the back of
12 it.
13 MR. WELLS: Judge, if I may?
14 Scott, it's actually ahead of Section
15 5.
16 THE WITNESS: Okay. Thank you.
17 A. Which one?
18 Q. Appendix 2.1. I think you really
19 have to get into Section 2 to find it. It's the
20 Appendix 2.1.
21 A. Well, there's Appendix A. Section
22 2...
23 Q. There's 2.1. You found it. And

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1 if you could, in Appendix 2.1, find Figure 5.
2 Did you find it?
3 MR. SASSER: Excuse me, David. Are
4 you going to go back to these sections
5 with some other witnesses? Do you
6 want to use these? Will that
7 make -- will that speed up the next
8 time? Or --
9 MR. LUDDER: Yeah, that's a good
10 idea. If you could mark that page
11 right there.
12 THE WITNESS: Sure.
13 BY MR. LUDDER:
14 Q. You found Figure 5?
15 A. If it's, Wetlands and Waters of
16 the U.S. Delineation Map.
17 Q. Right, right.
18 A. Okay.
19 Q. You'll see in the legend -- you'll
20 see a legend for -- or labeled, The Site?
21 A. Correct.
22 Q. And it has a marking next to it,
23 which appears to be a square box or a

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1 rectangular box, correct?
2 A. Correct.
3 Q. Is that referring to the lines
4 that surround -- or that surround the area in
5 the middle of this figure?
6 A. Yes, it is.
7 Q. Okay. Now, does this site that's
8 described in Figure 5, how does that compare to
9 Exhibit P-5, Boundary Sketch, the proposed
10 landfill expansion?
11 A. It is larger than that.
12 Q. Okay. So does this site boundary
13 in Figure 5 include more area than the expansion
14 footprint in P-5?
15 A. It does.
16 Q. But it also -- the area in Figure
17 5 does include --
18 A. Yes.
19 Q. -- the entire section of the
20 landfill expansion area, correct?
21 A. Yes. It appears to.
22 Q. Okay, okay. Does Figure 5
23 describe where wetlands are?

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1 A. Yes, it does.
2 Q. And does Figure 5 describe where
3 streams are -- intermittent and perennial
4 streams are?
5 A. Yes.
6 Q. And are some of those located in
7 the footprint of where the landfill expansion
8 area is?
9 A. That's correct.
10 Q. And does Figure 5 describe how
11 many acres of wetlands there are in this entire
12 site boundary?
13 A. I guess, yeah. Well, that's the
14 streams, so, yes. It says the wetlands are 11.7
15 acres.
16 Q. And does it describe how many
17 linear feet of intermittent streams there are
18 within the boundary of the -- described in
19 Figure 5?
20 A. Yes, it does.
21 Q. And how much is that?
22 A. 2,020 linear feet of intermediate
23 [verbatim] -- intermittent -- however you

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1 pronounce that.
2 Q. And does it describe how many
3 linear feet of perennial streams there are
4 within the boundary shown in Figure 5?
5 A. Correct.
6 Q. What is that?
7 A. 1,146 linear feet.
8 Q. Okay. Can you identify on Figure
9 5 where the proposed construction and demolition
10 landfill will be located? And if you need to,
11 compare to Exhibit P-5.
12 A. Yeah. It's going to be in this
13 area right here.
14 Q. All right. And you're pointing
15 outside the line -- the boundary line, or site
16 line, shown in Figure 5, correct?
17 A. Maybe it's there. I don't think
18 it is. It may be -- it may just be right there.
19 Surely there's a better figure with it all on
20 there. But this is this, and this is this, and
21 there and there, then it's -- it's only a little
22 bit above that. So it may all be in there.
23 Q. All right. Let me ask you if you

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1 can -- I'm pointing to a road -- what appears to
2 be a road of some kind --
3 A. Okay. So --
4 Q. -- in Figure 5.
5 A. Yeah, so it's above that. You're
6 right. So it's right there, yeah.
7 Q. So it's outside the area shown in
8 Figure 5 as a site?
9 A. Yeah, you're correct.
10 Q. Okay. So there is -- Figure 5
11 does not show any wetlands in the construction
12 and demolition landfill area, correct?
13 A. Correct. It does not.
14 Q. Okay. Was it -- the area that was
15 assessed for wetlands in Figure 5, did it
16 include the construction and demolition landfill
17 area, from what you can tell from that figure?
18 A. Say that one more time.
19 Q. Yeah. Figure 5 addresses wetlands
20 and streams within this site boundary, correct?
21 A. Correct.
22 Q. Does it address wetlands and
23 streams outside that site boundary?

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1 A. Not according to this figure.
2 Q. Okay, okay. Do siting standards
3 in Rule 335-13-4-.01 have to be complied with
4 before establishing a landfill?
5 A. One more time.
6 Q. Yes. Do the siting standards in
7 Rule 335-13-4-.01 have to be fully complied with
8 before establishing a landfill?
9 A. How would you -- establishing a
10 landfill? I'm not sure. Is that permitting a
11 landfill or constructing a landfill?
12 Q. All right. Let me refer you then
13 to Rule 335-13-4-.11, paren 1.
14 A. 335-13-4-.11, which is, General
15 Standards Design for Disposal Facility; is that
16 where you're at?
17 Q. Correct.
18 A. And you're in the (1), which is
19 General Standards?
20 Q. Correct.
21 A. Okay.
22 Q. So would you read the first
23 sentence of that rule?

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1 A. Okay. Number 1, General
2 Standards. 335-13-4-.12 through 335-13-4-.20
3 provides standards for establishing a landfill
4 unit providing that the siting standards of
5 335-13-4-.01 have been fully complied with to
6 the satisfaction of the Department.
7 Q. All right. What does
8 "establishing a landfill unit" mean in that
9 context? If you know.
10 A. I guess I don't know.
11 Q. All right. Let me ask you
12 if -- let's turn now to Appendix 2.1 in the
13 operations manual, and if you could -- if you
14 could, in Appendix 2.1, find Figure 5a.
15 A. It's not 5a down there. You said
16 it's in 2.1?
17 Q. Appendix 2.1, Figure 5a.
18 A. Just on this one?
19 Q. Continue on, I think.
20 A. Here we go. Appendix -- what?
21 There's Appendix D. Change -- C and D, am I too
22 far?
23 Q. I'll show you in a second. It

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1 is --
2 MR. WHITE: I can tell him what it
3 is.
4 Q. It's a bit beyond this letter.
5 You should be able to find this letter.
6 And -- I'm sorry. Appendix F. Keep going to
7 Appendix F.
8 A. There's F.
9 Q. There's F. Did you get to 5a?
10 A. There's the letter, I guess.
11 Q. Keep going.
12 A. Okay.
13 Q. Yeah, keep going.
14 A. 5a, got it. There we go.
15 Q. Now --
16 MR. SASSER: All right. Now what
17 are we looking at again?
18 MR. LUDDER: Figure 5a in Appendix
19 F.
20 THE WITNESS: It's very similar to
21 the other one.
22 MR. SASSER: Thank you.
23

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1 BY MR. LUDDER:
2 Q. Comparing Figure 5a to Figure 5,
3 does there appear to be any difference?
4 A. A little bit. They got a
5 different -- Section S1 is S1a and -b in this
6 one. Are you asking the site, or are you
7 asking --
8 Q. Just the diagram in the middle of
9 this figure --
10 A. Okay. You're asking for the site.
11 Q. -- is there any difference
12 between that and the diagram in Figure 5a, that
13 you can tell?
14 A. It -- the shape appears to be the
15 same, but the map is such -- not near as good a
16 map to tell --
17 Q. Okay.
18 A. -- with what we're looking at.
19 Q. Okay. Now, are the -- is the
20 wetland --
21 MR. WHITE: I'm going to object.
22 Can we identify what document we're
23 looking at? What is this document,

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1 for the record?
2 THE WITNESS: It is Figure 5a:
3 Wetlands and Waters of the U.S.
4 Delineation Map, which is from TTL.
5 Similar to the other one.
6 HEARING OFFICER: Let me give them
7 a chance to find it. Do y'all want to
8 look for it? You don't got it?
9 MR. WELLS: We have this.
10 HEARING OFFICER: You got it?
11 MR. WHITE: We have it. I just
12 want, for the record, for him to say
13 what it is he's looking at. I know
14 he's looking at a page in the
15 document, but I just want him to
16 identify it for the record.
17 HEARING OFFICER: Sure.
18 MR. WHITE: Can you identify it for
19 the record, please? Is that --
20 HEARING OFFICER: It's Figure 5a of
21 what?
22 THE WITNESS: Oh...
23 HEARING OFFICER: I think it's

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1 Appendix F.
2 MR. LUDDER: Appendix 2.1, Appendix
3 F within that appendix.
4 HEARING OFFICER: Okay. And that's
5 all in document --
6 MR. LUDDER: J-3, Part I.
7 HEARING OFFICER: J-3, Part I. All
8 right. I think that's the best we can
9 do.
10 MR. WHITE: Well, I mean as far as
11 the designation -- what it's -- what
12 it is.
13 HEARING OFFICER: And is that a map
14 of some kind? I can't see it from
15 here very well.
16 THE WITNESS: It is a map showing a
17 site with some -- and, again, it has
18 some wetlands and streams information
19 on it.
20 HEARING OFFICER: All right.
21 THE WITNESS: It's similar to the
22 other one.
23 MR. LUDDER: Similar to Figure 5

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1 that we were just talking about,
2 correct?
3 THE WITNESS: Correct.
4 BY MR. LUDDER:
5 Q. Now, if you compare the legends in
6 the two maps and tell me if you see any
7 difference in the legends.
8 A. All right.
9 HEARING OFFICER: Excuse me,
10 Mr. Story. We'll start -- the
11 difference between 5a and 5, right?
12 MR. LUDDER: Correct.
13 THE WITNESS: Correct.
14 A. All right. In the legend, data
15 points appear to be the same. Intermittent on
16 one -- on 5, I should say, is 2,020 linear feet.
17 On 5a, it is 1,130 linear feet. The perennial
18 is the same. There's an additional one on 5a
19 that says -- do you want me to read it?
20 Q. Ephemeral?
21 A. Ephemeral at 890 linear feet, and
22 it's located in S1, it appears.
23 Q. And the ephemeral stream in 5a

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1 does not appear in Figure 5, correct?

2 A. Well, there's a -- there's an S1a

3 and S1b in 5a, and there's only an S1 in -- in

4 Figure 5. And then the per -- the S1a is the

5 ephemeral one. I guess it's included. It's

6 just a different...

7 Q. Okay. So what you're saying is

8 that the legend in Figure 5 does not include

9 ephemeral stream?

10 A. Correct.

11 Q. But it is included in Figure 5a,

12 correct?

13 A. Correct.

14 Q. Okay. Now, if the Commission

15 determines that the landfill expansion

16 footprint -- or the footprint of the landfill

17 expansion in Exhibit P-5 cannot be located in

18 any area where there are wetlands or streams,

19 would that reduce the available acreage for

20 solid waste cells?

21 A. Well, there is a wetland

22 in -- currently in that area.

23 Q. Right. So if the Commission says

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1 that a landfill expansion cannot be located

2 anywhere in that wetland area, would that reduce

3 the acreage available for landfill cells?

4 A. Yes.

5 Q. And would it substantially reduce

6 the acreage?

7 A. Well, you've got a boundary that

8 you've got to have, so it -- it -- half

9 probably, maybe.

10 Q. Okay.

11 A. Something like that.

12 Q. Okay. Do you think the landfill

13 could be built -- or do you think -- do you

14 think the landfill could be built if they

15 exclude the wetlands and streams in the

16 footprint? Or any portion of the landfill could

17 be built there?

18 A. Yes.

19 Q. You think it could be?

20 A. Maybe I didn't understand your

21 question. I'm sorry. Go ahead. Obviously, I

22 must not have. Ask me again.

23 Q. All right. Do you think the

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1 landfill or any -- do you think any cells could

2 be built if the wetlands and streams are

3 excluded by the Commission?

4 A. Yes.

5 Q. Okay. But it would be a smaller

6 landfill than what's now permitted here,

7 correct?

8 MR. WHITE: I'm going to object to

9 leading.

10 HEARING OFFICER: Overruled.

11 THE WITNESS: Should I answer?

12 HEARING OFFICER: It would be about

13 half, wouldn't it?

14 THE WITNESS: Yes, sir.

15 BY MR. LUDDER:

16 Q. The new -- or the -- if the

17 landfill did not include the wetlands and

18 streams, it would be about half the size of

19 what's now been permitted, correct?

20 A. That's what it appears.

21 Q. And at half the size, would be

22 active life of the landfill be shortened?

23 A. Yes.

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1 Q. From what it's permitted now?

2 A. We don't permit the life of the

3 landfill.

4 Q. I understand. From the size of

5 the landfill that's permitted now?

6 A. Right.

7 Q. The active life of the landfill

8 would be shorter if you exclude the wetlands,

9 correct?

10 A. It wouldn't have as much air

11 space, so it would fill up quicker.

12 Q. Okay. All right. If you could

13 now, still in J-3, Part I, the operations

14 manual, turn to Section 7.2, which, I believe,

15 would be way to the rear.

16 A. I guess I'll go back here then.

17 Okay. There you go.

18 Q. All right. You found Section 7.2?

19 A. Yes.

20 Q. What does that address?

21 A. Daily cover.

22 Q. I'm sorry?

23 A. Daily cover.

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1 Q. Okay. And daily cover for what
2 landfill?
3 A. It sends -- section -- it says,
4 Specific Requirements for MSW Disposal. So it
5 would be for the MSW portion.
6 Q. So that would be for the green
7 landfill expansion area in Exhibit P-5?
8 A. Correct.
9 Q. And it would not be for the
10 construction and demolition landfill, correct?
11 A. Correct.
12 Q. And would you read the first
13 sentence under 7.2?
14 A. Sure. 7.2 is, Cover Material.
15 At the conclusion of each working day, the
16 Landfill Operator shall cover the general
17 working face of the landfill with a minimum of
18 six inches of compacted earth cover or an
19 approved alternate daily material.
20 Q. Okay. And would you read
21 the -- the third paragraph in Section 7.2?
22 A. Start with, Spray-on?
23 Q. Right.

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1 A. Spray-on, polymer-based materials,
2 or reusable geosynthetic covers may be used for
3 alternate daily cover material. Requests for
4 the use of an ADC will be submitted to ADEM for
5 approval. This cover shall be used for daily
6 cover operations over the active cell. At the
7 end of each week, an earthen cover as described
8 above shall be required for -- over the active
9 cell.
10 Q. All right. Now, what is the
11 purpose of a daily cover at a landfill?
12 A. There's numerous things. Number
13 one: Odors, vectors, control that. If you
14 cover it, then hopefully there's no smell, and
15 it keeps the rodents and stuff away. And also
16 it's a firebreak to -- in case there's a fire,
17 then hopefully it hits the dirt and won't spread
18 to the whole landfill.
19 MR. LUDDER: Okay. Did the court
20 reporter get all that?
21 COURT REPORTER: Yes.
22 MR. LUDDER: Okay.
23 BY MR. LUDDER:

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1 Q. In Paragraph 2 of Section 7.2,
2 does it describe the purpose of cover material?
3 A. Paragraph 2 of 7.2?
4 Q. Right.
5 A. Do you want me to read it?
6 Q. Does it -- well, okay. Just read
7 the second sentence.
8 A. Okay. The earthen cover material
9 will be placed and compacted to a minimum depth
10 of six inches to control disease, vectors,
11 fires, odors, blowing litter, and scavenging.
12 Q. All right. What are vectors?
13 A. I think -- you know, buzzards,
14 animals like that. I guess -- I mean, that's
15 what my -- what I think vectors would be, things
16 that would come in there, and, you know -- I
17 just -- similar-type stuff like that.
18 Q. Okay. Would that include coyotes?
19 A. Yes -- if a coyote is a vector.
20 I'm assuming that's what -- I've never actually
21 looked up the definition of a "vector," but I
22 assume -- thought that's what it was.
23 Q. Would it be fair to say it's --

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1 A. Since it's not covered in any the
2 other ones, I figure that's what it is. How
3 about that?
4 Q. Would it be fair to say that a
5 vector might be something that goes in and out
6 of the landfill?
7 A. Yes.
8 Q. And the term "scavenging," what
9 does that refer to?
10 A. I think it may have more than one
11 meaning. I assume it could be something coming
12 in there getting material out of there, or
13 somebody. It could be an animal or a person, I
14 guess, coming in there to -- getting stuff out
15 of the landfill.
16 Q. Okay. So it might refer to an
17 animal that comes in to scavenge or to forage
18 for food?
19 A. Correct.
20 Q. Now, the -- all right. You were
21 just looking at the rule, I believe. Let's look
22 at Rule 335-13-4-.22.
23 A. All right.

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1 Q. Now, does that -- what's the title
2 of that rule?
3 A. Specific Requirements for
4 Municipal Solid Waste Landfills.
5 Q. All right. So that rule does not
6 address anything to do with a construction and
7 demolition landfill, correct?
8 A. Correct.
9 Q. Paragraph (1)(a)1 -- oh,
10 just -- if you would, read from (a) to (a)1,
11 please.
12 A. All right.
13 All waste shall be covered as follows:
14 And 1 says, A minimum of six inches of
15 compacted earth or other alternative cover
16 material that includes but is not limited to
17 foams, geosynthetic or waste products, and is
18 approved by the Department shall be added at the
19 conclusion of each day's operation or as
20 otherwise approved by the Department to control
21 disease vectors, fires, odors, blowing litter,
22 and scavenging.
23 Q. Okay. Does the Department have

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1 the authority, under the rules, to require more
2 than six inches of daily cover?
3 A. It says a "minimum," so I would
4 guess, possibly.
5 Q. All right. If you would, look at
6 Exhibit P-6 again, of the same rule, Paragraph
7 (3)(b). And if you would, read that.
8 A. All right. (3) is Additional
9 Requirements, and (b) is, Notwithstanding this
10 Rule, additional requirements for operating and
11 maintaining a MSW -- or yeah -- MSW landfill may
12 be imposed by the Department, as deemed
13 necessary, to comply with the Act -- with the
14 Act and this Division.
15 Q. All right. If six inches of daily
16 cover are not enough to control bad odors
17 leaving the site, or control these vectors, such
18 as buzzards, or control vectors such as coyotes,
19 if six inches of daily cover with soil is not
20 enough to control those, would the Department
21 consider asking for -- asking -- or imposing a
22 larger depth of cover material?
23 A. It is possible, and there may be

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1 other means to -- to -- other things we may do
2 to help the situation, to make it...
3 Q. Okay. Are you aware of any
4 situation in Alabama where the Department has
5 required more than six inches of cover material?
6 A. I'm not.
7 Q. All right. Let me refer you now
8 to Exhibit J-1 -- Joint Exhibit J-1. And do you
9 recognize Exhibit J-1?
10 A. Yes.
11 Q. And what is that?
12 A. That is the permit modification
13 for the City of Dothan.
14 Q. Okay. And if you would, turn to
15 Section III.
16 A. All right.
17 Q. And the title of that section is
18 what?
19 A. Specific -- Specific MSW Landfill
20 Requirements.
21 Q. All right. And now, turn to the
22 Subsection H. Do you see that on Page 8?
23 A. Yes, sir.

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1 Q. And would you read that, please?
2 A. H is Cover Requirements.
3 The Permittee shall cover all wastes as
4 required by 335-13. The municipal solid waste
5 disposal area shall be covered at the conclusion
6 of each day's activity. The construction and
7 demolition waste area shall be covered at the
8 conclusion of each week's activities.
9 Q. Can you explain to me why the
10 title of Section III says, Specific MSW Landfill
11 Requirements, and Subsection H addresses
12 construction and demolition waste disposal
13 requirements?
14 A. Because -- yes, I can. We had to
15 find a place to put it there somewhere, and this
16 seemed as good a place as any.
17 Q. Okay.
18 A. The -- most permits are
19 boilerplate permits for -- in this case designed
20 for MSW permits -- when they add a second
21 working face in there for a C&D. We wanted to
22 make sure it was in there somewhere, and there's
23 the cover requirements, and we kind of stuck it

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1 in there for that.

2 Q. I'm sorry. You said most permits

3 are what?

4 A. Are boilerplates, what we start

5 out with. And so when you -- this one is more

6 specific for an MSW. When we added the C&D

7 requirements in there when they had two working

8 faces, we didn't -- wanted to make sure we had

9 that requirement in there. I mean, that's kind

10 of where we put it.

11 Q. Okay.

12 A. Just so it was in the permit.

13 Q. Okay. Is it common to mix

14 construction and demolition requirements with

15 municipal solid waste requirements in the same

16 permit?

17 A. Yes. And we -- we typically have

18 that. That's how we do it.

19 Q. Okay.

20 A. We weren't going to provide them a

21 second permit for the C&D, so...

22 Q. Okay. Now, absent of -- in the

23 first sentence of Subsection H, where it refers

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1 to 335-13, does that refer to all of Division

2 335-13 of the ADEM rules?

3 A. Apparently, yes. That's what it

4 says.

5 Q. So it doesn't refer to a specific

6 chapter?

7 A. It doesn't in this case, no. It

8 does not.

9 Q. Okay. Do you know how many

10 municipal solid waste landfills there are in the

11 state?

12 A. Probably around 30.

13 Q. Okay. Do you know how many of

14 those operate with approved alternative cover?

15 A. I would -- I do not know. I could

16 speculate if you want me to speculate.

17 Q. No, I wouldn't call it

18 speculation. Do you have an educated guess?

19 A. Okay. My educated guess is it'd

20 be most of them.

21 Q. Most of them allow alternative

22 covers?

23 A. Yes.

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1 Q. Okay. Are those alternative

2 covers pretty much the kind that were described

3 in the rule?

4 A. Yes.

5 Q. That's the rule that we referred

6 to earlier as 335-13-4-.22, paren 1, paren a,

7 correct?

8 A. Yes, sir.

9 Q. Okay. Now, do you know if those

10 alternative covers were approved by ADEM by

11 letter or by permit modification?

12 A. They are currently -- I can speak

13 for currently -- they are all in the permit,

14 currently.

15 Q. Okay. And was there a time in

16 which they were approved by letter?

17 A. Yes.

18 Q. Do you know when the time changed?

19 Or --

20 A. About the time that I took over

21 as -- I'm not saying it was because I -- about

22 that same time as when I took over is when it

23 changed. We had more staff, and we were making

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1 sure everything was in the permit. So somebody

2 looked at the permit and everything was in it,

3 so we included -- we didn't want to have a

4 letter in the file and stuff, so we -- it's

5 all -- everything is in the permit.

6 Q. So that would have been, like, how

7 many years ago?

8 A. Whenever the solid waste rule

9 changed. '07, '08, something like that.

10 Q. Okay.

11 A. Maybe '09. It might have taken us

12 a little longer to get it all in the permit, but

13 that's when we started doing it.

14 Q. Okay. Now, are you familiar with

15 the term "major permit modification"?

16 A. Yes.

17 Q. What does that mean?

18 A. That is a permit modification

19 that -- you want me to read what the

20 permit -- would it be easier to read what it is?

21 Q. Sure, sure.

22 A. All right. I'm going...

23 Q. I think you'll find it at

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1 335-13-5-.0 --
2 A. Yeah, I didn't think I had it.
3 I've got 1 and 4 here. I don't know if I've got
4 5 here.
5 Q. Yeah, I don't think you do. All
6 right. There are certain types of permit
7 modifications that are classified as "major,"
8 correct?
9 A. Correct.
10 Q. Do you know if alternative covers
11 are classified as a "major modification"?
12 A. They're not.
13 Q. They're not? And if they're not a
14 major modification, how are they classified?
15 A. We classify them as a variance.
16 Q. Okay. So it would not be a major
17 or a minor permit modification?
18 A. I mean, it is changing permit
19 conditions, but it's -- it's under the variance.
20 It's under the --
21 Q. It's -- it's only by way of a
22 variance?
23 A. Yes, sir.

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1 Q. Do you -- but the variance is
2 incorporated into a permit modification; is that
3 right?
4 A. I -- the term "modification" has a
5 specific meaning, and this is not a
6 modification. It's -- it's a variance. It's
7 variances that's in the permit -- I mean, it's
8 in our regs what a variance is, and so that's
9 how it was handled.
10 Q. Okay.
11 A. It is changing the permit, yes.
12 The permit -- the language is different, but
13 it's not a modification. It doesn't fall into
14 either one of the major or minor modifications,
15 if that's what you're getting -- if that's what
16 you're asking.
17 Q. Well, what I'm asking is: Would
18 you have to alter the permit in any way to --
19 A. Yes, we do.
20 Q. -- to accomplish a variance?
21 A. Yes.
22 Q. If you altered a permit to
23 accomplish a variance, and if that was the only

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1 change, would the Department go to public notice
2 and receive public comment on that change?
3 A. No, they would not.
4 Q. They would not?
5 A. No, sir.
6 Q. So the public would have no way of
7 knowing that a variance was being granted?
8 A. All of our files are available
9 online.
10 Q. All right. If the Commission
11 determines that this permit modification for the
12 Dothan landfill expansion should not
13 include -- I withdraw the question.
14 Let's look at J-1 where it talks
15 about -- I'll withdraw that.
16 MR. SASSER: David, how much longer
17 you got?
18 MR. LUDDER: Huh?
19 MR. SASSER: How much longer you
20 got?
21 MR. LUDDER: We got one more...
22 MR. SASSER: Do you mind?
23 MR. LUDDER: No.

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1 MR. SASSER: Could I ask the Judge
2 and audience for a short five-minute
3 break?
4 HEARING OFFICER: Sure. Let's take
5 ten -- ten minutes.
6 MR. SASSER: Thank you, sir.
7 HEARING OFFICER: You're welcome.
8 (A brief recess was taken.)
9 HEARING OFFICER: All right. We're
10 back on the record.
11 BY MR. LUDDER:
12 Q. All right. Mr. Story, would you
13 now look at Exhibit J-3 Part I, the operations
14 manual, at Section 8.1(a)?
15 A. Thank you. Yes.
16 Q. And what does that refer to?
17 A. Section 8 is, Specific
18 Requirements for Construction/Demolition
19 Disposal, and then 8.1 is Operation of
20 Construction/Demolition Disposal Area. And you
21 asked for (a)?
22 Q. (a)1, yes.
23 A. (a)1 says -- or (a) is, All waste

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1 shall be confined -- I mean, Shall be covered as
2 follows: -- 1 says, A minimum of six inches of
3 compacted earth or other alternative cover
4 material that includes but is limited -- but is
5 not limited to foams, tarps, tire chips,
6 geosynthetic or waste products, and is approved
7 by the Department shall be added at the
8 conclusion of each week's operation or as
9 otherwise specified by the Department to control
10 disease vectors, fired, odors, blown litter and
11 scavenging.
12 Q. It appears that the rule actually
13 says "fired" rather than "fires" --
14 A. Correct.
15 Q. -- but you're changing it out,
16 because you think that's wrong?
17 A. Yeah, I hope so.
18 Q. Okay. So how many landfills in
19 Alabama, that you're aware of, use waste
20 products as cover material?
21 A. There, we have a few of them that
22 use, like, petroleum contaminated waste.
23 Roadside cleanups, something like that, that

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1 they have a --
2 Q. I'm sorry. What?
3 A. Petroleum contaminated waste.
4 There's maybe a tanker spill on the side of the
5 road, or something like that, and in cleaning up
6 that dirt, then we may allow them to use that as
7 alternate cover material.
8 Q. Okay. Are you familiar with
9 the --
10 A. But not likely on a C&D landfill
11 though.
12 Q. Pardon me?
13 A. But not likely on a C&D landfill.
14 Q. So waste products would be more
15 common at municipal waste --
16 A. Yes.
17 Q. -- landfills?
18 A. Correct.
19 Q. I may change that. Let me revise
20 my question.
21 Waste products are more likely to be used
22 as cover material at municipal waste landfills
23 rather than at construction and demolition

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1 landfills?
2 A. Correct.
3 Q. Okay. Are you familiar with the
4 Arrowhead Landfill?
5 A. I am.
6 Q. And was there a period of time
7 when they were disposing of coal ash waste at
8 that landfill?
9 A. Yes.
10 Q. And were they authorized to use an
11 alternative cover at that landfill?
12 A. I do not have the permit in front
13 of me, but I do believe that is correct.
14 Q. And do you know what that
15 alternative cover was?
16 A. I'd hate to speculate, but I do
17 think it -- I mean --
18 HEARING OFFICER: Do you know?
19 A. I don't -- I don't know for sure.
20 But -- you know, I don't know for sure.
21 Q. All right. Does it -- does it
22 help you if -- does -- do you recall if it was
23 coal ash?

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1 A. That's what I thought it was.
2 Q. That's what you thought it was?
3 A. Yes, I'm pretty sure they
4 used -- they were able to use that as --
5 Q. So would that be a situation where
6 they used a waste product as cover material?
7 A. Correct.
8 Q. So in that case, they were
9 disposing of coal ash and covering it with coal
10 ash?
11 A. Right.
12 Q. And the Department authorized that
13 as an alternative cover?
14 A. Correct.
15 Q. So in effect, they had nothing
16 different than the waste product being placed on
17 that landfill, correct?
18 A. That is correct, I do believe. If
19 I can expand on that?
20 Q. Sure.
21 A. We would require, at the end of
22 the week, to cover with dirt.
23 Q. Okay.

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1 A. At the end of each working week.
2 So there would be -- at some point in time,
3 there would be dirt cover on there after
4 a -- after a week's time, yes.
5 Q. All right. That's your
6 recollection?
7 A. That is -- yes, sir.
8 Q. Okay.
9 MR. SASSER: Speak up.
10 THE WITNESS: I'm sorry. I'll back
11 away. Maybe I'll speak a little
12 louder if I back away.
13 HEARING OFFICER: Thank you.
14 THE WITNESS: I'm sorry.
15 BY MR. LUDDER:
16 Q. Now, what kind of foams could be
17 used for alternative covers?
18 A. We have, in the past, allowed
19 spray-on foams, some -- material that they get
20 out there and do spray, and it -- and it just
21 covers material. And we -- we've had -- we've
22 been to, I guess, some of our technical stuff,
23 training that we have, periodically,

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1 our -- SWANA and stuff like that, where
2 they -- somebody gets up there and gives a
3 presentation on it. And I've seen -- I've never
4 seen it applied at a landfill, but I've seen
5 presentations about it, but I know some of them
6 are allowed to have that, and it's -- they
7 basically just spray the stuff on there, and it
8 just kind of hardens, and the next day, they
9 come out there and fill on top of it.
10 Q. Okay. And could you describe the
11 tarps that are mentioned in this?
12 A. Just any kind of tarp that you
13 would see at Walmart or something like that.
14 It's just a big tarp that they roll out there
15 over -- over the waste, and then the next
16 morning, they peel it back off and start putting
17 waste back down. Again, all these are
18 requirements at the end of the week. They have
19 to put down dirt as -- as a -- as a -- because
20 in that way, there's no -- even though the tarp
21 can act as a barrier for vectors and stuff like
22 that, it doesn't provide a firebreak. And so
23 the dirt at the end of the week is what we

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1 usually -- is what we make and require them to
2 do to have the firebreak.
3 Q. All right. And what are tire
4 chips?
5 A. It is -- it would be just tires
6 ground up into little -- little bitty small
7 things that, again, require -- usually when we
8 have that, we require -- number one, any time we
9 use one of those things, we require some kind of
10 a demonstration. Not any time but most of the
11 time, if it's something different like a tire.
12 Typically, we don't -- it's not something that
13 they use. And so we would ask them to do a
14 study, see how it actually works, and when
15 it -- when we decide to do it, a lot of times,
16 in that case, the tire chips, it's usually like
17 50-percent-tire-chips-and-50-percent-dirt kind
18 of thing, just something to -- they have readily
19 available tire chips, and they have a little bit
20 of dirt, and you kind of combine it, and they
21 actually have something they can use as cover
22 material. That's kind of how it works.
23 Q. All right. What does

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1 "geosynthetic" refer to? Is that geosynthetic
2 waste products -- or geosynthetic products?
3 A. Yeah, to me, them and the -- what
4 I think -- the geosynthetics and the foams are
5 very similar-type products, is what -- is my
6 thoughts on it.
7 Q. Okay. It wouldn't refer to a
8 geosynthetic liner, like a plastic liner?
9 A. I don't think we've ever had
10 anybody propose to use a geosynthetic liner like
11 that.
12 Q. Okay. Can you tell us what's the
13 most common alternative cover that's used in
14 Alabama?
15 A. I'm not sure. I mean, there's a
16 bunch of them out there, you know.
17 Q. A lot of different types?
18 A. Yes, sir.
19 Q. Okay. Look, if you would, at
20 330 -- Rule 335-13-4-.23 -- I'm sorry -- .22.
21 Specific Requirements for Municipal Solid Waste
22 Landfills.
23 A. Okay. All right.

<p style="text-align: right;">Page 412</p> <p>1 Q. Okay. Now, we've discussed, I 2 believe previously, that the minimum cover 3 requirement is described in Paragraph (1)(a)1, 4 correct? 5 A. Correct. 6 Q. Excuse me. And that's a daily 7 cover requirement, correct? 8 A. It says, Daily Operation above it. 9 Yes. 10 Q. So some kind of cover has to be 11 applied every day, correct? 12 A. Well, unless you have a variance 13 from it, but, yeah. For an MSW landfill, it 14 would be every day. I don't think you can give 15 a variance for an MSW. I'm sorry. Strike 16 that -- I can strike that? I don't know if I 17 can. 18 Q. We understand. Now, this rule 19 authorizes the use of alternative covers if 20 approved by the Department. It doesn't say 21 anything about if you use an alternative cover, 22 you have to cover with six inches of dirt once a 23 week?</p>	<p style="text-align: right;">Page 414</p> <p>1 A. Okay. 2 Q. I'm sorry. Let's move onto a 3 different issue. Exhibit J-1, Part I, saying -- 4 A. So I'm in the permit? 5 Q. I'm sorry, not J-1. J-3. 6 A. Okay. 7 Q. Part I, Section 7.3. 8 A. I'm still in cover. Is that what 9 you're looking at? 10 Q. Yes. And now Section 7.3 applies 11 to what kind of landfill? 12 A. 7.3 -- back in 7, it says, 13 Specific Requirements for MSW Disposal. 14 Q. And "MSW" is municipal solid 15 waste? 16 A. Correct. 17 Q. Yeah. Now, that -- read the first 18 sentences of that. 19 A. 7.3, Confining Waste Area. 20 The Landfill Operator shall confine the 21 waste in as small an area as practical that 22 still allows for adequate equipment operation. 23 Q. All right. Can you quantify what</p>
<p style="text-align: right;">Page 413</p> <p>1 A. No, sir, it does not. 2 Q. And is that a condition that you 3 can put in permits every time that you 4 use -- that you authorize alternative cover? 5 A. Yes, sir. 6 Q. Okay. All right. If you would, 7 look at Rule 335-13-4-.23, which is, Specific 8 Requirements for Inert-Construction/Demolition 9 Landfills and Industrial Landfills, correct? 10 A. Correct. 11 Q. And Subparagraph (1)(a)1 is the 12 minimum cover requirement, correct? 13 A. Correct. 14 Q. And that is also six inches of 15 compacted dirt or other alternative cover 16 material, correct? 17 A. Correct. 18 Q. But that's once a week; is that 19 right? 20 A. Yes, sir. 21 Q. Now, let's refer to Exhibit J-1, 22 which is the Joint Exhibit Number 1, which is in 23 your binder, which is the final permit.</p>	<p style="text-align: right;">Page 415</p> <p>1 "as small an area as practical" is? 2 A. Are you -- can you ask it 3 differently? 4 Q. Can you describe the -- is there a 5 way to determine what "as small an area as 6 practical" means at each landfill? 7 A. I think it would be different at 8 each landfill. 9 Q. Is there a way to determine what 10 it is? 11 A. Depending on the manpower of the 12 personnel and stuff that they have, equipment 13 and stuff they have, can they manage the waste? 14 It's different for each landfill. 15 Q. All right. How would you 16 determine that -- how would you determine 17 whether a landfill was complying with "as small 18 as -- as small an area as practical"? 19 A. Our inspector would go out there, 20 and when she was inspecting the site, she 21 would -- he or she, I shouldn't say 22 "she" -- would notice if they're having any 23 operational problems with -- number one, with</p>

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1 covering, you know, is it too big, they can't
2 get it covered that day, can they not get it
3 compacted, just -- are they operating -- if the
4 waste is in as small an area as possible, and
5 they're doing what they're supposed to be doing,
6 it's not -- it's usually not a problem. Or it's
7 not a problem. Let's put it that way. If you
8 have it spread out all over the place, then it
9 could be a problem. I'll put it that way.
10 Q. Well --
11 A. Or maybe not. Depends on if they
12 have enough manpower to get it covered and
13 handle it.
14 Q. If they cover at the end of each
15 working day, and they have the capacity to do
16 that, could they still operate as -- could they
17 still dispose of waste in a -- a working face
18 that is not as small as possible?
19 A. Yes.
20 Q. So they could have a very large
21 working face, and as long as they covered it at
22 the end of each working day, would that satisfy
23 the "as small of an area as practical"?

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1 A. You know, as long as they
2 were -- yeah -- they got it -- and there's more
3 to it than covering. They have to get it
4 compacted and all kind of stuff, but, yes. If
5 they got it -- if they were operating it as a
6 landfill as required in the permit and got it
7 covered at the end of the day, then we would say
8 that that was -- obviously, they could handle
9 that amount of area.
10 Q. So the working face could be any
11 size as long as, at the end of the day, they
12 have compacted and covered?
13 A. Yes.
14 Q. Okay. And would you turn to
15 Section 8.1 of J-3, Part I, the operations
16 manual?
17 A. Okay.
18 Q. And look at Subparagraph (c).
19 A. All right.
20 Q. And does that basically include
21 the same provision that, All waste shall be
22 confined to as small an area as possible?
23 A. Yes.

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1 Q. And that --
2 A. But this is for the C&D portion.
3 Q. Yes, I was just going to ask you
4 that. This provision that we're looking at,
5 Section 8.1, applies to this construction and
6 demolition landfill, correct?
7 A. Yes, sir.
8 Q. Now, would you look at -- in
9 that -- in that particular subparagraph, is
10 there any reference to the number of working
11 faces that are planned?
12 A. It doesn't appear to be.
13 Q. Okay. And go back to 7.3, which
14 is the municipal solid waste provision of the
15 application. And is there -- in 7.3, is there
16 any reference to the number of working faces
17 that are planned?
18 A. There's not.
19 Q. If you would, refer to Rule
20 335-13-4-.22.
21 A. Okay.
22 Q. Paren b.
23 A. Okay.

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1 Q. Now, is that the rule that
2 requires that waste be confined to as small an
3 area as possible?
4 A. Would you like for me to read it?
5 Q. If you want to read it rather than
6 answer the question, you can.
7 A. Okay. I mean, yes, it is. It
8 does refer to it.
9 Q. Okay. And that rule applies to
10 what kind of landfill?
11 A. MSW.
12 Q. Okay. And Rule 335-13-4-.23,
13 paren c., does that rule apply to construction
14 and demolition landfills?
15 A. It does.
16 Q. And is that the paragraph that
17 addresses confining waste to as small an area as
18 possible?
19 A. Yes, sir.
20 Q. All right. If you would now, turn
21 to the permit, Exhibit J-1, Section III, on Page
22 7.
23 A. Okay.

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<p>1 Q. Now, does Section III address</p> <p>2 specific MSW landfill requirements?</p> <p>3 A. It does.</p> <p>4 Q. And if you would, look at</p> <p>5 Paragraph J in Section III. Did you find that?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Why don't you read the first</p> <p>8 sentence?</p> <p>9 A. All right. J says, Daily Cells.</p> <p>10 All waste shall be confined to an area as</p> <p>11 small as possible and spread to a depth not to</p> <p>12 exceed [verbatim] two feet prior to compaction,</p> <p>13 and such compaction shall be accomplished on a</p> <p>14 face slope not to exceed four to one or as</p> <p>15 otherwise approved by ADEM.</p> <p>16 Q. Okay. And read the second</p> <p>17 sentence.</p> <p>18 A. The Permittee has been granted a</p> <p>19 variance to operate two working faces. See</p> <p>20 Section X.2.</p> <p>21 Q. Okay. Does Section J specify one</p> <p>22 working face at the MSW landfill, and one</p> <p>23 working face at the construction and demolition</p>	<p>1 And it refers back to where we were.</p> <p>2 Q. Does that section specify one</p> <p>3 working face at the municipal solid waste</p> <p>4 landfill, and one working face at the</p> <p>5 construction and demolition landfill?</p> <p>6 A. Not specifically, no. It does</p> <p>7 not.</p> <p>8 Q. And the first sentence there says</p> <p>9 the -- a variance is granted from a particular</p> <p>10 rule, and they refer to 335-13-4-.23. Does that</p> <p>11 rule refer to municipal solid waste, or</p> <p>12 construction and demolition waste?</p> <p>13 A. .23 is -- it says .23. 23 is for</p> <p>14 Inert-Construction/Demolition Landfills and</p> <p>15 Industrial Landfills.</p> <p>16 Q. All right. And that rule -- and</p> <p>17 the permit provision actually says, Paragraph</p> <p>18 1(c), requiring waste to be confined to as small</p> <p>19 an area as possible, correct?</p> <p>20 A. Yes, that's what it says.</p> <p>21 Q. So the variance was granted from</p> <p>22 the rule requirement for C&D landfills that they</p> <p>23 operate a working face as small an area as</p>
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<p>1 landfill?</p> <p>2 A. Can you ask that one more time?</p> <p>3 Q. Does Section J specify one working</p> <p>4 face at the MSW landfill, and one working face</p> <p>5 at the C&D landfill?</p> <p>6 A. The first sentence does not. I</p> <p>7 would reckon the second sentence would</p> <p>8 allow -- it refers to Section X.2.</p> <p>9 Q. Refers to what?</p> <p>10 A. To Section X.2 of the permit.</p> <p>11 Q. Okay. Let's refer to that Section</p> <p>12 X.2, on Page 14 of J-1, correct?</p> <p>13 A. Yes.</p> <p>14 Q. This is the variances section,</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. And what does 2 say?</p> <p>18 A. A variance is granted from ADEM</p> <p>19 Rule 335-13-4-.23(1)c requiring waste to be</p> <p>20 confined to as small an area as possible. The</p> <p>21 Permittee has been approved to operate two</p> <p>22 working faces. The working faces must be</p> <p>23 confined to as small an area as possible.</p>	<p>1 possible; is that right?</p> <p>2 A. Correct.</p> <p>3 Q. It's not a variance -- I'll</p> <p>4 withdraw that.</p> <p>5 So is it fair to say that the variance was</p> <p>6 granted only with respect to the construction</p> <p>7 and demolition landfills?</p> <p>8 A. I think it's poorly worded. How</p> <p>9 about that? That wasn't the intent.</p> <p>10 Q. As written, it refers only to the</p> <p>11 construction and demolition rule, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. All right. And as it is written,</p> <p>14 could the Permittee operate two working faces at</p> <p>15 the municipal solid waste landfill?</p> <p>16 A. Strict interpretation of what this</p> <p>17 says, no. It would -- I don't believe it would</p> <p>18 allow that.</p> <p>19 HEARING OFFICER: One more time.</p> <p>20 THE WITNESS: I said strict</p> <p>21 interpretation of what this says right</p> <p>22 here, I would say it doesn't allow it.</p> <p>23 HEARING OFFICER: Does not?</p>

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1 BY MR. LUDDER:
2 Q. Does it allow two working faces at
3 the construction and demolition land --
4 HEARING OFFICER: Does or does not?
5 THE WITNESS: Does not, at the MSW.
6 You asked MSW? Is that what you said?
7 MR. LUDDER: I did, right.
8 THE WITNESS: Right, correct.
9 Right. It appears to allow for two at
10 the C&D.
11 BY MR. LUDDER:
12 Q. Okay. And you base that on the
13 second sentence relating to the first sentence
14 and the rule number referring to the
15 construction and demolition rule?
16 A. Correct. We cited the wrong thing
17 in there.
18 Q. Okay. Now, can you direct the
19 Hearing Officer to any place in J-3, Part I,
20 which is the operations manual, where the City
21 requested a variance from the requirements of
22 335-13-4-.23(1)(c)?
23 A. I need to go look up your

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1 335 -- whatever you just said -- and see what it
2 requires -- what it's talking about. Which one
3 was that one?
4 Q. Right. 335-13-4-.23(1)(c).
5 A. (1)(c). I'm guessing (1)(c) says,
6 All waste shall be confined to as small an area
7 as possible and placed onto an appropriate slope
8 not to exceed four to one, 25 percent, as
9 approved by the Department.
10 Q. All right. And that's --
11 A. So that's (1), and you're asking
12 me to find somewhere in the operating plan
13 that --
14 Q. In the operating plan, is there
15 any place that you can see where the City
16 requested a variance from that requirement?
17 A. In looking through it previously,
18 the City doesn't specifically request a variance
19 from it. It's just -- it's included in the
20 material.
21 Q. In what material?
22 A. In the operating plan, they
23 mention in there three-to-one slopes numerous

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1 times.
2 Q. I'm not talking about slopes. I'm
3 talking about the -- the confinement --
4 A. Oh, you're talking about -- okay,
5 okay, okay. I'm sorry. Well, yeah, they -- we
6 have -- in the operating plan, they -- in there,
7 it mentions how the -- how they're going to
8 operate the MSW landfill, and how they're going
9 to operate the C&D cell.
10 Q. And we've been over that in those
11 Sections 7.3 and 8.1, correct?
12 A. Correct.
13 Q. Do either of those sections ask
14 for a variance?
15 A. Not specifically.
16 Q. Okay. Would the -- would Exhibit
17 J-3, Part II, which, I believe, is the stability
18 analysis --
19 A. Right.
20 Q. -- can you direct us anywhere in
21 there where they would have -- or where they did
22 request a variance from 335-13-4-.23 paren 1(c)?
23 A. I don't think there's any specific

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1 requests in there for a variance.
2 Q. Okay. And Exhibit J-3, Part III,
3 what is that?
4 A. Let me see where Exhibit 3 is.
5 J-3, Part III, Permit Modification Application,
6 Drawings.
7 Q. Drawings? Okay.
8 A. That's the drawings.
9 Q. So that's Exhibit P-5; is that
10 right?
11 A. (The Witness nodded).
12 Q. Is there anywhere in Exhibit P-5
13 where the City has requested a variance from
14 Rule 335-13-4-.23 paren 1(c)?
15 A. No, not in the drawings.
16 Q. Okay. If you would, look at Joint
17 Exhibit Number 3, Part IV.
18 A. I think I have it.
19 Q. Okay. And what is that? Describe
20 it.
21 A. The application.
22 Q. And how many pages is that?
23 A. Two or three pages. Two pages and

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<p>1 a cover letter.</p> <p>2 Q. Okay.</p> <p>3 A. Is that right? Am I on the right</p> <p>4 one?</p> <p>5 Q. Yes, yes. And that's not the</p> <p>6 entire application? You consider the operating</p> <p>7 plan part of the application?</p> <p>8 A. Right, correct.</p> <p>9 Q. And the stability analysis is part</p> <p>10 of the application --</p> <p>11 A. Yes. The drawings and stuff, yes,</p> <p>12 yes.</p> <p>13 Q. Is there anything in Joint Exhibit</p> <p>14 Number 3, Part IV, where the City requests a</p> <p>15 variance from the requirements of 335-13-4-.23</p> <p>16 paren 1(c)?</p> <p>17 A. There's nothing in here that</p> <p>18 requested.</p> <p>19 Q. Okay. Can you direct the Hearing</p> <p>20 Officer to any section or page in Exhibit J-3,</p> <p>21 Part I, which is the operating plan, where the</p> <p>22 City has provided an assessment with supporting</p> <p>23 factual information of the impact that the</p>	<p>1 assessment with supporting factual information</p> <p>2 of the impact that the variance from 3 -- from</p> <p>3 335-13-4-.22 -- I'm sorry -- .23 paren 1(c) will</p> <p>4 have on public health and the environment.</p> <p>5 A. I do not believe it's in there.</p> <p>6 Q. Okay. And same question with</p> <p>7 regard to Exhibit J-3, Part II, which is the</p> <p>8 stability analysis. Would that assessment be</p> <p>9 included in that part?</p> <p>10 A. Would it be, or is it?</p> <p>11 Q. Is it?</p> <p>12 A. Okay. I don't know, but I don't</p> <p>13 think it is.</p> <p>14 Q. Okay. And would that -- or is</p> <p>15 that assessment included in Exhibit J-3, Part</p> <p>16 III? Which is the drawings, I believe, correct?</p> <p>17 A. Correct, it is. Correct.</p> <p>18 Q. Is the assessment included in</p> <p>19 that?</p> <p>20 A. No, sir.</p> <p>21 Q. And is that assessment included in</p> <p>22 Exhibit J-3, Part IV, which is the -- I think</p> <p>23 you said -- three-page application?</p>
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<p>1 variance from Rule 335-13-4-.23 paren 1(c) will</p> <p>2 have on public health and the environment?</p> <p>3 A. Okay. So we're still on -- we're</p> <p>4 on 23 (1)(c), which is, Confined to as small an</p> <p>5 area as possible, and you're asking me to look</p> <p>6 in what?</p> <p>7 Q. In the operating plan, Exhibit</p> <p>8 J-3, Part I. The question is: Does that</p> <p>9 include an assessment with supporting factual</p> <p>10 information of the impact of the variance from</p> <p>11 the rule we just discussed on public health and</p> <p>12 the environment?</p> <p>13 A. It's just the operating plan is</p> <p>14 all it is.</p> <p>15 Q. Pardon me?</p> <p>16 A. Without me having to go look for</p> <p>17 it, you're asking me in the operating plan, is</p> <p>18 it -- what am I looking for again? Which</p> <p>19 section?</p> <p>20 Q. You're looking for -- you're</p> <p>21 looking in J-3, Part I.</p> <p>22 A. Okay.</p> <p>23 Q. And you're looking for an</p>	<p>1 A. No, sir, it's not.</p> <p>2 Q. All right. Can you direct the</p> <p>3 Hearing Officer to any section or page in</p> <p>4 Exhibit J-3, Part I, the operating plan, that</p> <p>5 includes a concise factual statement of the</p> <p>6 reasons the City believes that noncompliance</p> <p>7 with Rule 335-13-4-.23, paren 1(c) will not</p> <p>8 threaten public health or unreasonably create</p> <p>9 environmental pollution?</p> <p>10 A. No, sir. I don't think I could.</p> <p>11 Q. Okay. And with respect to Exhibit</p> <p>12 J-3, Part II, would that statement of reasons be</p> <p>13 included -- or is that statement of reasons</p> <p>14 included in Exhibit J-3, Part II?</p> <p>15 A. I don't believe it is.</p> <p>16 Q. And is that statement of reasons</p> <p>17 included in Exhibit J-3, Part III?</p> <p>18 A. I wouldn't -- no, sir. I don't</p> <p>19 think so.</p> <p>20 Q. And is that statement of reasons</p> <p>21 included in Exhibit J-3, Part IV?</p> <p>22 A. I don't think so.</p> <p>23 Q. Can you direct the Hearing Officer</p>

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1 to any section or page in Exhibit J-3, Part I,
2 that includes a clear and complete statement of
3 the precise extent of the relief sought,
4 including specific identification of the
5 particular provision of the regulations from
6 which a variance is sought? And I'm -- I'm
7 referring to Rule 335-13-4-.23 paren 1(c), as
8 the regulations.
9 A. It has two working faces still.
10 Q. It's the
11 Confined-as-small-as-possible rule?
12 A. Okay. Right. Okay. All right.
13 Q. Is there a clear and complete
14 statement of the precise extent of relief sought
15 provided by the applicant in Exhibit J-3, Part
16 I?
17 A. I don't think so.
18 Q. Same question with regard to
19 Exhibit J-3, Part II.
20 A. Again, I do not believe so.
21 Q. I'm sorry?
22 A. I don't believe so.
23 Q. And the same question with regard

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1 to Exhibit J-3, Part III.
2 A. Correct. I don't -- I don't
3 believe so.
4 Q. And the same question with regard
5 to Exhibit J-3, Part IV.
6 A. Again, I don't think so.
7 Q. Okay. If you would, look at
8 Exhibit J-1 again, the final permit.
9 A. All right.
10 Q. Okay. The first page of that
11 exhibit, I believe, is the cover letter,
12 correct?
13 A. Correct.
14 Q. The second page is a document
15 entitled, Final Determination.
16 Do you see that?
17 A. Yes, sir.
18 Q. Is there anything in that Final
19 Determination that expresses a finding by the
20 Department that noncompliance with Rule
21 335-13-4-.23(1)(c) will not threaten the public
22 health or unreasonably create environmental
23 pollution?

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1 A. Nothing specific. And the last
2 sentence says, The Land Division has determined
3 that the modification of the permit meets the
4 applicable requirements of ADEM Administrative
5 Codes Division 13.
6 Q. Okay. Can you direct the Hearing
7 Officer to any place in Exhibit J-1, in the
8 entire exhibit -- that's the permit --
9 A. Okay.
10 Q. -- where ADEM made an express
11 finding that noncompliance with Rule
12 335-13-4-.23 --
13 MR. CARTER: Your Honor, I'm going
14 to object. That's been asked and
15 answered.
16 HEARING OFFICER: Overruled.
17 THE WITNESS: Do I have to answer
18 it? Okay.
19 HEARING OFFICER: If he finished.
20 Did you finish?
21 MR. LUDDER: No, I didn't finish
22 the question.
23 THE WITNESS: Okay. Sorry.

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1 BY MR. LUDDER:
2 Q. Can you direct the Hearing Officer
3 to any place in Exhibit J-1 where ADEM made an
4 express finding that noncompliance with Rule
5 335-13-4-.23 paren 1, paren c will not threaten
6 the public health or unreasonably create
7 environmental pollution? And the question is:
8 Is there an express finding to that effect in
9 Exhibit J-1?
10 A. I will read the last sentence of
11 the variance, which may do that.
12 Any variance granted by ADEM may be
13 terminated by ADEM whenever ADEM finds, after
14 notice and opportunity for hearing, that the
15 petitioner is in violation of any requirement,
16 condition, schedule, limitation or any other
17 provision of the variance, and that the
18 [verbatim] operation under the variance does not
19 meet the minimum requirements established
20 by...federal law...or is unreasonably
21 threatening to public health.
22 I'm not sure if that --
23 MR. LUDDER: Are you getting that?

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1 COURT REPORTER: Uh-huh.
2 THE WITNESS: I think I actually
3 skipped a couple words there. Sorry
4 about that.
5 A. But besides that, I don't think
6 there's any -- there's nothing else in there
7 that says --
8 Q. Okay. What you referred to is the
9 last -- the very last paragraph on Page 14 of
10 the permit, correct?
11 A. Right.
12 Q. That's what you were reading from?
13 A. Yes, sir.
14 Q. And other than that paragraph, you
15 don't know of any expressed finding that
16 noncompliance with 335-13-4-.23 paren 1(c) will
17 not threaten the public health or unreasonably
18 create environmental pollution?
19 A. No, sir.
20 Q. I'm sorry?
21 A. No, sir.
22 Q. All right. If you would now, look
23 at Rule 335-13-.22 [verbatim].

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1 A. Okay.
2 Q. Paren 1, paren b. Did you find
3 that paragraph?
4 A. Say it again.
5 Q. Paren 1.
6 A. You said in 4-.22 or -.23?
7 Q. 4-.22.
8 A. Paren 1?
9 Q. Paren 1, sub paren b.
10 A. Okay. I got it.
11 Q. Okay. Does that rule require a
12 face slope not to exceed four to one?
13 A. It says -- the paragraph says, All
14 waste shall be confined to as small an area as
15 possible and spread to a depth not to exceed
16 [verbatim] two feet prior to compaction, and
17 such compaction shall be accomplished on a face
18 slope not to exceed four to one or as otherwise
19 approved by the Department.
20 Q. Okay. Does that mean that after
21 compaction, the face slope has to be four to one
22 or less?
23 A. Or as otherwise approved by the

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1 Department. Yes.
2 Q. Okay. And if you would, turn to
3 Exhibit J-3, Part I, the operating manual,
4 Section 7.4.
5 A. All right.
6 Q. All right. Now, the City of
7 Dothan, in this operating manual -- well, would
8 you read the first sentence of Section 7.4 of
9 the operating manual?
10 A. 7.4, Operating Slope.
11 The landfill operator shall construct with
12 a working face -- construct a working face with
13 a slope of approximately three to one.
14 Q. So does that deviate from the rule
15 that you just read --
16 A. Yes.
17 Q. -- which speaks to -- as a
18 four-to-one slope?
19 A. Correct.
20 Q. Now, if you would, refer to
21 Exhibit J-1, the permit, Section III, Paragraph
22 J, on Page 9.
23 A. Okay.

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1 Q. That's the Daily Cells provision,
2 correct?
3 A. Correct.
4 Q. And what's the slope -- the face
5 slope requirement in that section?
6 A. Daily Cells, it says -- do you
7 want me to read it?
8 Q. Well, is it four to one or three
9 to one?
10 A. It says four to one.
11 Q. Four to one? And that's -- so
12 during daily operation, under the permit, a
13 four-to-one slope is required; is that right?
14 A. That's what it says, yes.
15 Q. And that's at the municipal solid
16 waste landfill, right?
17 A. Correct.
18 Q. So which -- does the permit
19 incorporate the application as part of the
20 permit?
21 A. I -- I assume so. I think so.
22 Q. If you would, look at Page 1 of
23 Exhibit J-1, and the second-to-the-last

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1 paragraph.
2 A. Okay.
3 Q. And the first sentence, does that
4 indicate that the permit application is
5 incorporated by reference into the permit?
6 A. It says, As known -- And known as
7 the Permit Application hereby incorporated by
8 reference and hereinafter referred to as the
9 Application.
10 Q. So does that provision incorporate
11 by reference the application?
12 A. Yes.
13 Q. So you have two conflicting
14 requirements, one in the terms of the permit
15 that says four-to-one face slope, and in the
16 application, it says three-to-one face slope; is
17 that right?
18 A. Yes, sir.
19 Q. And was the -- was the City
20 granted a variance from the four-to-one face
21 slope -- the four-to-one face slope? Not the
22 final slope, but the face slope?
23 A. Excuse me. Do you want me to read

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1 the variance?
2 Q. Well, no, I'm just asking
3 you what -- does the variance cover the face
4 slope, the daily operating face slope?
5 A. You know, I -- I had assumed it
6 was. How about that? That was -- I thought it
7 did, but, obviously, reading it, it doesn't
8 appear to.
9 Q. Does it say, Final slope?
10 A. It does say, Final cover system
11 shall not exceed -- there again -- a variance
12 for three-to-one final slopes.
13 Q. Okay. And --
14 A. That would be the final slopes if
15 you didn't have any -- daily slopes?
16 MR. CARTER: Can I --
17 A. I don't know how you'd do that --
18 HEARING OFFICER: Hold on.
19 MR. CARTER: David -- or the
20 question you had on the face slope, is
21 that what you're asking?
22 MR. LUDDER: Right.
23 MR. CARTER: Well, I would object,

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1 because that's not even an issue
2 brought up in the request for hearing,
3 the variance granted to the face
4 slope. The variance was granted to
5 the final slope, and that's what's in
6 the request for hearing, not the face
7 slope.
8 MR. LUDDER: And I'm getting to the
9 connection in just a moment.
10 HEARING OFFICER: All right. I'll
11 let you go ahead.
12 BY MR. LUDDER:
13 Q. Your last comment was what?
14 A. I don't know how you'd get to a
15 three-to-one outside -- outside slope if you
16 didn't have three-to-one interior slope.
17 Q. Okay. So you don't think that you
18 can -- let's suppose that the City is required
19 to comply with a daily face slope of four to
20 one. Can they, engineering-wise, achieve a
21 final cover slope of three to one?
22 A. Technically, I guess they could,
23 but I don't -- I don't know how they would do

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1 it, personally.
2 Q. Okay.
3 A. It would take a lot of dirt,
4 probably.
5 Q. Okay. All right. Now,
6 Rule 335-13-4-.20 refers to what?
7 A. Closure and Post-Closure.
8 Q. I'm sorry?
9 A. Closure and Post-Closure.
10 Q. Okay. And Paragraph -- yeah, in
11 Paragraph 2(b) -- I'm sorry -- 2(c), what does
12 that address?
13 A. Final soil cover shall be graded
14 so that -- then it's got some stuff below it.
15 Q. I'm sorry?
16 A. It deals with final soil cover,
17 the grading of it.
18 Q. All right. And Subparagraph 2
19 under (c), specifies the final grade, correct?
20 A. Correct.
21 Q. Would you read that?
22 A. The maximum final grade of the
23 final cover system shall not exceed 25 percent

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<p>1 or as specified by the Department to minimize 2 erosion. 3 Q. All right. Now, if you would, 4 refer to Exhibit J-3, Part I, the operating 5 manual, and turn to Section 7.5.1. 6 A. Okay. 7 Q. Did you find that? 8 A. Yes. 9 Q. And in that section, does -- what 10 does -- all right. Would you read from the 11 beginning of that section to the end of 12 Subparagraph 2? 13 A. From there to there? 14 Q. Yes. 15 A. 7.5.1, Final Grading. 16 The Closure Plan for the landfill includes 17 a final contour and drainage plan as required by 18 ADEM Administrative Code, Rule 335-13-4.20. The 19 final grades shown in the Permit Plans are 20 indicative of top of waste. The regulations 21 require that the final soil cover are [verbatim] 22 graded so that: Surface water does not pond 23 over the landfill facility.</p>	<p>1 final -- final grade of the final soil cover? 2 A. It does not. 3 Q. It does not? All right. Did the 4 rules provide -- I withdraw that. 5 Let's look at Rule 335-13-4-.23. 6 A. Okay. C&D? 7 Q. Right. This is the C&D 8 requirement, correct? 9 A. Yes, sir. 10 Q. And Subparagraph 1(c) -- I'm 11 sorry. 12 Is there a rule -- or is there a provision 13 in that rule that addresses the slope of the 14 final cover? 15 A. For a -- for a C&D landfill? 16 Q. Correct. 17 A. You said for the -- which -- for 18 which slope? For internal? Or -- 19 Q. For the final cover. 20 A. For the final? It says, Final 21 closure shall be carried out in accordance of 22 -4-.20 of this Division. I think in -4-.20, it 23 mentions...</p>
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<p>1 The final grade does not exceed three to 2 one. 3 Q. Okay. Did you -- pardon me? 4 A. Go ahead. I'm sorry. I was 5 making sure there wasn't anything on that next 6 page. 7 Q. Now, is it true that the 8 regulations require that the final soil cover be 9 graded so that the final grade does not exceed 10 three to one? 11 A. No. The regulation says four to 12 one. 13 Q. So that's an incorrect statement? 14 A. Yeah, I guess. Yes. 15 Q. And -- 16 A. Maybe this is a site-specific 17 operation manual, I guess, and this -- 18 Q. I'm sorry? 19 A. Maybe this is part of the request 20 for three to one. They're just mentioning it in 21 here and jumping ahead, I guess. 22 Q. Does Section 7.5.1 ask for a 23 variance from Rule 335-13-4-.20 with respect to</p>	<p>1 COURT REPORTER: I'm sorry, sir? 2 A. I think that final closure shall 3 be carried out in accordance with 335-13-4-.20 4 of this Division. I think that's where it 5 mentions it. 6 Q. All right. Turn to that section. 7 And I believe it should be on Page 4-15. Is 8 that what you show? 9 A. Is it not the same one we were 10 just at a while ago? 11 Q. Yep. It's on a different page 12 number. 13 A. Okay. Yep. 14 Q. All right. So you're looking at 15 Page 4-13, and what paragraph are you looking 16 at? 17 A. 2 -- this is the one we just did a 18 while ago -- 2(c), which is, Final 19 cover -- Final soil cover shall be graded so 20 that -- and then 2 says, The maximum final grade 21 of the final cover system shall not exceed 25 22 percent or as specified by the Department to 23 minimize erosion.</p>

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1 Q. All right. So it's your position
2 that at the C&D landfill, the final slope cover
3 should be four to one; is that right?
4 A. Correct.
5 Q. Under the rule?
6 A. Right, right.
7 Q. And is there any provision in the
8 permit that authorizes a variance from that
9 requirement at the C&D landfill?
10 A. Say your question one more time,
11 please.
12 Q. Is there any provision in the
13 permit that authorizes a variance from that
14 requirement at the C&D landfill?
15 A. The variance states, The Permittee
16 is granted a variance from ADEM Rule
17 335-13-4-.20(2)(c)2. -- which we just
18 read -- Requiring that the maximum final grade
19 of the final cover system not exceed four to
20 one. The Permittee shall construct a final
21 cover system with three to one final slopes...
22 Q. So do you think that
23 that -- excuse me. You didn't finish reading

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1 that last sentence.
2 A. Oh, okay. I'm sorry. No, I
3 didn't.
4 ...As shown in the final [verbatim] drawing
5 dated January 15, 2015. See Section VIII.A.
6 Q. Okay. So is it your position
7 that -- that the variance allows a three-to-one
8 slope of the final cover at the C&D landfill?
9 A. That variance there, does it allow
10 it for the C&D? Let me see, it goes back to
11 VIII.A. It appears to.
12 Q. Okay.
13 A. I mean, I -- yeah, I think it
14 does.
15 Q. Okay. So the permit authorizes a
16 variance of -- to a slope of three to one for
17 the C&D landfill; is that right? That -- I
18 believe that's what you just testified to.
19 A. Well, I'm saying -- the -- the
20 variance -- the variance from Rule -- the (c)2
21 rule, and we said a while ago that the C&D
22 refers back to that -- to this rule.
23 Q. Right.

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1 A. The permit doesn't speculate if
2 it's for both of them or just one of them, so I
3 assume the way the permit is written, it would
4 cover both of them.
5 Q. Okay. Now, if you would, look
6 at -- look at Section 8.1 of the operating
7 manual, Exhibit J-3, Part I. And look at
8 Paragraph C -- I'm sorry. It's not Paragraph C.
9 All right. Is there any place in Section 8 of
10 J-3, Part I, that addresses the slope of the
11 final cover for the C&D portion of the landfill?
12 A. The final cover. It -- it doesn't
13 mention specifically. The slope's in here, but
14 not -- it doesn't mention final cover, unless
15 I'm just missing it.
16 Q. Okay. Can you look at Section
17 7.5? I'm sorry. 7.5 is the municipal, right?
18 A. Municipal, right.
19 Q. Is there any discussion in Section
20 8 about closure of the C&D landfill?
21 A. Okay. Do you want me to read?
22 Q. Yeah.
23 A. Okay.

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1 Final closure shall be carried out
2 in accordance with ADEM Administrative Code
3 335-13-4-.20 of this Division, along with the
4 Permit Plans.
5 Q. Okay. And that rule that they
6 cited specifies a four-to-one slope, does it
7 not?
8 A. Yes, sir, it does.
9 Q. Did they request a variance from
10 the slope requirement of 335-13-4-.20?
11 A. For the C&D portion?
12 Q. For the C&D portion, yes.
13 A. I don't -- I don't know. I don't
14 think so.
15 Q. Okay. But you -- the Department
16 granted a variance from that slope requirement
17 for the C&D landfill?
18 A. The -- it appears we wrote it in
19 there to give a variance to this provision, and
20 because the permit covered both the C&D and the
21 MSW, it appears that it -- it takes care of both
22 of them.
23 Q. All right.

<p style="text-align: right;">Page 452</p> <p>1 A. Does that make sense?</p> <p>2 Q. Yeah, I think. They didn't ask</p> <p>3 for a variance, but the permit allows a</p> <p>4 variance?</p> <p>5 A. I think the permit wasn't -- it</p> <p>6 wasn't written to give them a variance from it,</p> <p>7 but I think the way it was written allows for</p> <p>8 it.</p> <p>9 Q. So your intention was different?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. Would you look at the</p> <p>12 Exhibit P-5, which is the plan drawings in front</p> <p>13 of you, and tell me if there's any one of those</p> <p>14 drawings that show the final slope of the C&D</p> <p>15 landfill?</p> <p>16 A. It shows four to one.</p> <p>17 Q. It says four to one?</p> <p>18 A. I mean, I might have to have some</p> <p>19 glasses to see it, but I think it says four to</p> <p>20 one. Do you see it?</p> <p>21 Q. I do. I see it.</p> <p>22 A. I can barely see it.</p> <p>23 Q. Okay. And you're looking at the</p>	<p style="text-align: right;">Page 454</p> <p>1 any of the materials that the City submitted to</p> <p>2 ADEM address -- calculates -- calculations for</p> <p>3 soil loss?</p> <p>4 A. We already saw the stability</p> <p>5 analysis. I -- I assume it would be in there.</p> <p>6 Q. Okay. Can you --</p> <p>7 A. I have not read that, though.</p> <p>8 Q. Okay. It may not be there as</p> <p>9 well?</p> <p>10 A. I have no idea.</p> <p>11 Q. Okay. So you don't know either</p> <p>12 way?</p> <p>13 A. Either way. No, sir. No, sir.</p> <p>14 Q. Okay. You testified earlier from</p> <p>15 your reading of the rule, that -- or the reading</p> <p>16 of a rule, that the final cover system of four</p> <p>17 to one was to minimize erosion. Do you recall</p> <p>18 that?</p> <p>19 A. I read it? Is that what you said?</p> <p>20 Q. Yeah.</p> <p>21 A. Okay. Yeah, I probably did. I</p> <p>22 read a lot of stuff.</p> <p>23 Q. Okay, okay. Minimizing erosion is</p>
<p style="text-align: right;">Page 453</p> <p>1 Final Grading Plans, Sheet Number 5, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And in the -- the right half of</p> <p>4 this page, you're looking at a diagram which you</p> <p>5 believe to be the C&D landfill?</p> <p>6 A. Correct.</p> <p>7 Q. And what's shown on the left half</p> <p>8 of the page?</p> <p>9 A. The existing landfill, and the</p> <p>10 modification -- the -- the expansion of the MSW</p> <p>11 portion.</p> <p>12 Q. Okay. So in their plans, and in</p> <p>13 their -- in the plan drawings, and in the</p> <p>14 operating plan, they indicate a four-to-one</p> <p>15 final slope, correct?</p> <p>16 A. I think so, yes.</p> <p>17 Q. And in the permit, you allow a</p> <p>18 three-to-one final slope?</p> <p>19 A. As written.</p> <p>20 Q. Okay. Are you familiar with the</p> <p>21 Universal Soil Loss Equation?</p> <p>22 A. I am not.</p> <p>23 Q. You are not? Do you know, if, in</p>	<p style="text-align: right;">Page 455</p> <p>1 -- is the reason for imposing a four-to-one</p> <p>2 slope requirement, is it not?</p> <p>3 A. It's a major part of it. Yes,</p> <p>4 sir.</p> <p>5 Q. Okay. And would a three-to-one</p> <p>6 slope requirement be a steeper requirement than</p> <p>7 four to one?</p> <p>8 A. That's a more difficult</p> <p>9 requirement. Steeper? Or --</p> <p>10 Q. No, I'm talking about steeper in</p> <p>11 terms of slope. Is it a steeper slope?</p> <p>12 A. Yes.</p> <p>13 Q. And would you expect a</p> <p>14 three-to-one slope to have higher potential for</p> <p>15 erosion than a four-to-one slope?</p> <p>16 A. Yes. I would -- potentially,</p> <p>17 yeah.</p> <p>18 Q. Potentially, yes?</p> <p>19 A. Yeah, sure.</p> <p>20 Q. All right. So you testified</p> <p>21 earlier that the permit, Exhibit J-1, authorizes</p> <p>22 a variance from the final slope requirement,</p> <p>23 which, normally is four to one, but the variance</p>

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<p>1 allows three to one, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Can you direct the Hearing Officer</p> <p>4 to any section or page in Exhibit J-3, Part I,</p> <p>5 of the operating manual that includes an</p> <p>6 assessment with supporting factual information</p> <p>7 of the impact that a variance from the</p> <p>8 four-to-one slope requirement would have on</p> <p>9 public health and the environment?</p> <p>10 A. I'm not sure it's in there.</p> <p>11 Q. Not sure, or you don't believe</p> <p>12 it's there?</p> <p>13 A. Well, read me the question one</p> <p>14 more time.</p> <p>15 Q. Sure. Can you direct the Hearing</p> <p>16 Officer to any section or page in Exhibit J-3,</p> <p>17 Part I, the operating manual, that includes an</p> <p>18 assessment with supporting factual information</p> <p>19 of the impact that the variance from the slope</p> <p>20 requirement would have on public health and the</p> <p>21 environment?</p> <p>22 A. I can't. I don't think I can.</p> <p>23 Q. You don't think you can? Same</p>	<p>1 A. Same answer.</p> <p>2 Q. And same question with regard to</p> <p>3 Exhibit J-3, Part III.</p> <p>4 A. Same answer.</p> <p>5 Q. And same question with regard to</p> <p>6 Exhibit J-3, Part IV.</p> <p>7 A. No, sir.</p> <p>8 Q. I'm sorry?</p> <p>9 A. No, sir. I don't think I can.</p> <p>10 Q. Can you direct the Hearing Officer</p> <p>11 to any section or page in Exhibit J-3, Part I,</p> <p>12 that includes a clear and complete statement of</p> <p>13 the precise extent of the relief sought,</p> <p>14 including specific identification of the</p> <p>15 particular provisions of the regulations from</p> <p>16 which the variance is sought? And I'm speaking</p> <p>17 about the slope -- final slope requirement.</p> <p>18 A. I don't think there is.</p> <p>19 Q. I'm sorry?</p> <p>20 A. I don't think it's in there, or</p> <p>21 any of the rest of them you're fixing to call</p> <p>22 out, if you want to go through them.</p> <p>23 Q. All right. So Part II, Part III,</p>
Page 457	Page 459
<p>1 question with regard to Exhibit J-3, Part II,</p> <p>2 which, I think is the soil stability analysis.</p> <p>3 Again, is there an assessment with supporting</p> <p>4 factual information of the impact of the</p> <p>5 variance on public health and the environment?</p> <p>6 A. Yeah, I don't think so. Not</p> <p>7 specifically.</p> <p>8 Q. Same question with regard to</p> <p>9 Exhibit J-3, Part III.</p> <p>10 A. Again, same -- I don't think so.</p> <p>11 Q. And same question with regard to</p> <p>12 Exhibit J-3, Part IV.</p> <p>13 A. Yeah, not that I know of.</p> <p>14 Q. Can you direct the Hearing Officer</p> <p>15 to any section or page in Exhibit J-3, Part I,</p> <p>16 that includes a concise factual statement of the</p> <p>17 reasons the Petitioner believes that</p> <p>18 noncompliance with the four-to-one slope</p> <p>19 requirement will not threaten public health or</p> <p>20 unreasonably create environmental pollution?</p> <p>21 A. No, sir. I don't think I can.</p> <p>22 Q. Okay. Same question with regard</p> <p>23 to Exhibit J-3, Part II.</p>	<p>1 and Part IV, you don't think it's in there as</p> <p>2 well?</p> <p>3 A. No, sir. And the next question</p> <p>4 too.</p> <p>5 Q. Can you direct the Hearing Officer</p> <p>6 to any place in -- in J-1, that's the final</p> <p>7 permit, where ADEM made an express finding that</p> <p>8 noncompliance with the four-to-one slope</p> <p>9 requirement in the rules will not threaten</p> <p>10 public health or unreasonably create</p> <p>11 environmental pollution?</p> <p>12 A. I'll refer back to Section X, the</p> <p>13 variance, the last paragraph. Which -- and I'll</p> <p>14 read it again.</p> <p>15 Q. All right. That's the last</p> <p>16 paragraph on Page 14?</p> <p>17 A. Yes.</p> <p>18 Q. All right. That's the -- you</p> <p>19 think that is an express finding that</p> <p>20 noncompliance with the four-to-one slope</p> <p>21 requirement will not threaten public health or</p> <p>22 reasonably create environmental pollution?</p> <p>23 A. Well, if it does, it says we'll</p>

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1 terminate it, so I guess it implies that we're
2 assuming it doesn't. But other than that, I
3 don't think it's in there anywhere --
4 Q. Okay. Other than that, that's the
5 only paragraph you can cite?
6 A. Yes, sir.
7 Q. Okay. Let me ask you to look at
8 Exhibit J-3, Part I, Appendix 4.1.
9 A. This says J-3, Part I,
10 Appendix -- what? It's got a bunch of
11 appendixes.
12 Q. It's Appendix 4.1. I assume it's
13 in Section 4, and it's Appendix 4.1.
14 A. Okay. It's going to be back
15 further. Oh, Appendix 4.1. All right.
16 Q. Right, there you go.
17 A. I'm sorry.
18 Q. Okay. You can turn the page.
19 A. Okay.
20 Q. Do you know what that -- that
21 appendix is about?
22 A. It is the adjacent property owners
23 to the landfill.

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1 Q. And is that a list of property
2 owners?
3 A. It appears to be.
4 Q. Okay. And that's provided by the
5 Applicant, correct?
6 A. Correct.
7 Q. Now, when you issued public notice
8 for this permit modification, did the Department
9 send a public notice to all the persons on that
10 list?
11 A. We tried. I assume we did.
12 Q. Okay.
13 A. We made an attempt to contact each
14 of these people on this list.
15 Q. Okay. Would you make an attempt
16 to contact anybody that was not on the list?
17 A. I think we have a list here at the
18 Department that the Department keeps of people
19 who we notified.
20 Q. If they specifically ask?
21 A. If they ask for it, yes, sir.
22 Q. Okay. Is Michael Del Vecchio on
23 that list?

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1 A. The only Del Vecchio I see is
2 David and Peggy.
3 Q. David and Peggy?
4 A. Correct.
5 Q. Okay. If Michael Del Vecchio is
6 not on that list, is it fair to assume that you
7 didn't send him a copy of the public notice,
8 unless he's on this other list you talked about?
9 A. Correct.
10 MR. CARTER: Judge, I'm going to
11 object to anymore -- I mean, if it's a
12 question of notice, I think they've
13 filed an appeal, so I think notice is
14 irrelevant.
15 HEARING OFFICER: Well, he's
16 already answered that question, so
17 let's ask the next one.
18 MR. LUDDER: That's all my
19 questions of this Witness.
20 HEARING OFFICER: Thank you. Do
21 your cross or go to lunch?
22 MR. CARTER: I'm not -- I don't
23 have my watch with me or anything. I

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1 don't even know what time it is.
2 HEARING OFFICER: It's about a
3 quarter until 12.
4 MR. CARTER: If it -- I guess it
5 makes sense to probably -- if we go
6 ahead and break and then come back a
7 little early. That'd be fine.
8 HEARING OFFICER: I'm going to need
9 to break until one o'clock. Thank
10 you.
11 (A lunch recess was taken.)
12 HEARING OFFICER: All right. We
13 are back on the record.
14 Cross-examination?
15 MR. CARTER: Thank you, Your Honor.
16 CROSS-EXAMINATION
17 BY MR. CARTER:
18 Q. Mr. Story, I'm just going to kind
19 of pick up a little bit. If you want to, go
20 ahead and turn back to Joint Exhibit Number 1,
21 which is just the modified permit. Okay.
22 That's the modified permit, Solid Waste Disposal
23 Permit 35-06; is that right?

<p style="text-align: right;">Page 464</p> <p>1 A. Yes, sir.</p> <p>2 Q. And that's -- and that's the one</p> <p>3 you have been testifying to today that you were</p> <p>4 in the process and reviewed that process,</p> <p>5 and, well -- okay.</p> <p>6 Now, let me -- let me ask you. On the</p> <p>7 third page of it, okay, now -- I'm sorry -- the</p> <p>8 second page, second page. Okay. I believe you</p> <p>9 had testified earlier -- and you may have even</p> <p>10 read this statement -- along with reviewing the</p> <p>11 permit that y'all -- you helped -- you reviewed</p> <p>12 the draft of that permit; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And in reviewing the draft</p> <p>15 of that permit, did you also use the application</p> <p>16 that was submitted for that permit?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And I -- and forgive me if</p> <p>19 I don't remember correctly -- but earlier today</p> <p>20 in your testimony, I think you may have even</p> <p>21 referenced on that page to -- it looks like the</p> <p>22 next-to-last paragraph.</p> <p>23 A. Are you --</p>	<p style="text-align: right;">Page 466</p> <p>1 A. Correct.</p> <p>2 Q. Okay. Now, in consideration of</p> <p>3 all those things, I just want to go back over.</p> <p>4 Now, when you review the permit, at that point,</p> <p>5 it's still -- that's the proposed permit; is</p> <p>6 that correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And now, you in turn, after</p> <p>9 your review of it, you make -- you just make a</p> <p>10 recommendation at that point, I guess, is</p> <p>11 what...</p> <p>12 A. Is this before we send it to the</p> <p>13 facility, or is this before it's gone to notice,</p> <p>14 or, I mean, where are we in the process?</p> <p>15 Q. Okay. When you initially reviewed</p> <p>16 the draft permit, which, I think Mr. -- you</p> <p>17 testified Mr. Kelly does a draft permit?</p> <p>18 A. Right, right.</p> <p>19 Q. And you receive it, and you review</p> <p>20 it?</p> <p>21 A. Correct.</p> <p>22 Q. At that point, what do you do with</p> <p>23 it?</p>
<p style="text-align: right;">Page 465</p> <p>1 Q. Is that --</p> <p>2 A. Is it in the --</p> <p>3 Q. Oh, on the Final Determination.</p> <p>4 A. Okay. Final -- yes, okay.</p> <p>5 Q. So based on the statement in that,</p> <p>6 the -- what do you consider the permit</p> <p>7 application?</p> <p>8 A. Everything we got in, in regards</p> <p>9 to -- information we got in and needed to -- to</p> <p>10 actually write the permit --</p> <p>11 Q. Okay.</p> <p>12 A. -- whether it be in the</p> <p>13 application --</p> <p>14 Q. And that includes, I think, the</p> <p>15 operations manual; is that part?</p> <p>16 A. Correct.</p> <p>17 Q. And then the -- my favorite -- the</p> <p>18 soil stability study? Is that --</p> <p>19 A. Correct.</p> <p>20 Q. -- part of it? And then I think</p> <p>21 there was a Joint Exhibit Number 4 [verbatim],</p> <p>22 which was the application from the City of</p> <p>23 Dothan?</p>	<p style="text-align: right;">Page 467</p> <p>1 A. Generally, what I'd do is I</p> <p>2 would -- I would look through it and, like I</p> <p>3 said, mostly, it's a boilerplate. A lot of</p> <p>4 times, a simple renewal, really nothing changes</p> <p>5 in them, and so I'm looking through there to see</p> <p>6 what it says. You know, I knew -- I know we'd</p> <p>7 gotten, like in this case, a modification</p> <p>8 application in to expand the facility, and so</p> <p>9 I'm looking at what all changes in the permit.</p> <p>10 So I'm going through there to verify that this</p> <p>11 is there, this there, that he -- you know, he</p> <p>12 got the information correct here and there. And</p> <p>13 so I'm just going through there and looking to</p> <p>14 see what's different, what catches my eye, that</p> <p>15 kind of stuff. And then if I have questions,</p> <p>16 then I go ask him, or pull the application or</p> <p>17 the drawings.</p> <p>18 Q. What about -- do you consult the</p> <p>19 old permit?</p> <p>20 A. Oh, yeah. We'll look at the old</p> <p>21 permit and see what the old permit says.</p> <p>22 Q. Okay. And so in your review of</p> <p>23 this, is that when you noticed there were</p>

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1 differences?
2 A. Yes.
3 Q. Okay. And if you would, just
4 right offhand, what were the differences that
5 you noticed that were --
6 A. It -- well, we had a couple of
7 variances that were different. We -- the
8 landfill -- the disposal area was different. It
9 expanded. It had mention of a C&D area in there
10 as well too. So those things were different.
11 Q. Okay. And now, when you -- you
12 spot those, is that something -- so if I say in
13 that -- in the permit application, is there a
14 specific paragraph or a section, something that
15 says a request for variances? Is that in there?
16 A. In our permit?
17 Q. No, in the permit application.
18 A. No, there's not. There's not.
19 Q. Okay. So how do you determine
20 when there's a request for variances?
21 A. Based on the information we get.
22 You know, a lot of times, if it's a -- if
23 it's -- if we're right in the middle of a permit

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1 cycle -- renewal cycle, and somebody
2 would -- likes one, they -- you know, they send
3 in a request to us. A lot of times, it will be
4 a letter form like that. Or they'll give us a
5 call, and we'll say, Hey, send us an e-mail,
6 something describing what you're doing, why, and
7 all that kind of stuff.
8 In this case, it was part of the
9 modification -- it was mentioned in the
10 application in the -- in the -- in the drawings,
11 in the operation plan, all that kind of stuff.
12 And so that's where -- that's how we knew that
13 that was something they were wanting to do this
14 time.
15 Q. Okay.
16 A. It's different every time.
17 There's different ways we can do it.
18 Q. How the City files a permit -- a
19 modification application, there's no certain
20 form or anything for -- that you would file for
21 a variance?
22 A. No, we don't have a form for a
23 variance. No. We -- it's -- it's -- it's how

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1 they request it, what information we need once
2 we find out that -- that they're looking to do
3 something different.
4 Q. Okay. And now let me go back just
5 to the permit for a second and just cover a
6 little -- a couple things real quick. There was
7 some discussion in your testimony this morning.
8 First, I mean, does -- does the permit that you
9 reviewed, does it allow for the discharge of
10 fill materials into a wetland?
11 A. Our permit does not.
12 Q. Okay. Does it allow for the
13 discharge of fill materials into intermittent
14 streams or waters of the State of Alabama?
15 A. No. Our permit does not.
16 Q. Okay. And is that process covered
17 by another permit?
18 A. It is.
19 Q. Okay. And who would that be?
20 A. That's under the Corps and along
21 with our field office -- is the joint permit
22 with them.
23 Q. All right. If you would, can you

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1 identify a document that's marked as Respondent
2 Number 1?
3 A. This is the Corps permit.
4 Q. Okay. And you received that
5 permit from -- well, who did you receive that
6 permit from?
7 A. It actually -- it was -- let me
8 see. It was from CDG Engineering. Actually,
9 it's got the cover letter, but the permit itself
10 came from the Department of the Army, to Ernest
11 Stokes.
12 Q. Okay. But that was a copy you had
13 requested and they had sent to you; is that
14 correct?
15 A. Correct.
16 Q. Now, so that, the permit you have
17 right there, that is what controls those two
18 issues I asked you about before, about the
19 wetlands, and the streams, and the waters of the
20 State; is that correct?
21 A. Correct.
22 Q. So now -- okay. I'll ask
23 for -- just to clarify a little bit.

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1 There, y'all talked -- Mr. Ludder asked you
2 quite a bit about alternative daily cover.
3 Does the permit that you reviewed, does it
4 allow for the use of alternative daily cover?
5 A. No. No, it does not.
6 Q. Okay. Did the facility request
7 that?
8 A. They did not request.
9 Q. So what would happen if they -- I
10 mean, if they did? I mean, how would that
11 process work?
12 A. We would do it like any other one.
13 We would get the information in, and we
14 would -- excuse me -- we would review it, see if
15 we needed any other additional information, and
16 then we would process it as a -- as a variance
17 in the Department.
18 Q. Very similar to the same say we
19 did the variances on this permit; is that
20 correct?
21 A. Except for the other ones that
22 came in with the application. This one would be
23 something different.

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1 Q. But they -- basically, they would
2 have to -- the request would be made,
3 information would be provided to the Department,
4 and then, ultimately, the Department would make
5 a decision?
6 A. Correct. And if we agreed with
7 it, we'd put it in the permit.
8 Q. Okay. Now, specifically, the
9 two -- the two variances which were discussed
10 and issued -- and granted in the modified
11 permit, the two working faces -- I'm trying to
12 think where is -- oh, it's going to be -- on the
13 permit, on the modified permit --
14 A. Okay.
15 Q. -- where it talks about -- let me
16 see. Oh, okay. Well, no. Okay. That's it
17 okay. I'm sorry about that. Okay. Section X
18 of the variance -- the variances.
19 A. Okay.
20 Q. All right. There was some
21 discussion you had with Mr. Ludder, some
22 questions, about it references the -- the ADEM
23 rule, and I think you replied to him that that

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1 was a rule about construction and demolition --
2 A. Right.
3 Q. -- landfills; is that right?
4 A. That's correct.
5 Q. Okay. Now, referring to the
6 permit in this -- in this particular situation,
7 35-06, what kind of permit is it?
8 A. It's that MSW permit.
9 Q. Okay. And but -- but they
10 also have -- but they also have a C&D cell; is
11 that correct?
12 A. Well, we have plans for it, yes.
13 Q. Well, right. And according to the
14 plans and the information given to you, if it's
15 a municipal solid waste landfill, what would be
16 an additional cell? I mean, an additional face,
17 excuse me. I'm sorry.
18 A. They could have an -- I guess, two
19 ways. They could have an additional MSW face
20 somewhere, or they could have, in this case, a
21 C&D cell somewhere else.
22 Q. So as a municipal solid waste
23 landfill, they already have -- we know they have

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1 a municipal solid waste cell?
2 A. Correct.
3 Q. So that one is a given. And then
4 are you saying that the C&D cell would be the
5 second?
6 A. The second, yes.
7 Q. Okay. And I think you've also
8 explained, you know, when we got into the regs
9 about the smallest face as possible, small an
10 area as possible, and you -- once again, you
11 said that's defined how?
12 A. By their ability to manage the
13 site according to the permit.
14 Q. Okay.
15 A. You know, making sure they compact
16 it and cover it every day and that kind of
17 stuff. Or as required by the permit.
18 Q. And from what you reviewed in the
19 application and everything, and the permit as
20 well, did you have any disagreement with that
21 particular variance?
22 A. No. We wouldn't have granted the
23 variance if we had a disagreement.

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1 Q. Okay. The slope stability study
2 as well, is that -- what is -- what is that
3 included in the application for?
4 A. They would include that if they're
5 requesting something other than four-to-one
6 slopes, something steeper than four-to-one
7 slopes.
8 Q. Okay. Because -- now is that -- I
9 think also there was some question about erosion
10 and things like that. Would information
11 contained in the slope stability study address
12 erosion, or is that just toward the slope?
13 A. Well, it definitely would do the
14 slope, but it probably has in there, as well,
15 about the erosion of the slope. I imagine it
16 would.
17 Q. Okay. What about in the operation
18 plan? Is there -- is there a section in the
19 operation plan that discusses stormwater
20 runoff, for example?
21 A. Yes, there is.
22 Q. Okay. And I think I have that
23 marked.

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1 MR. DAVIS: Yeah, it's way back
2 here, somewhere.
3 MR. CARTER: I think it's 5.
4 MR. DAVIS: I think you're right.
5 MR. CARTER: Yeah, if --
6 MR. DAVIS: Here you go.
7 MR. CARTER: Man, those books.
8 BY MR. CARTER:
9 Q. Okay. If you can, it's part of
10 the operation manual, Section 5.6 -- well,
11 excuse me, 5.4 and 5.6. They're on the same
12 page, but if you can locate that.
13 A. All right. I've got 5.4 and 5.6.
14 Q. Okay. You have got those? And
15 what are those particular sections?
16 A. They are Stormwater Runoff Control
17 and NPDES Stormwater Permit. It's part of the
18 Water Management Section.
19 Q. All right. Now,
20 necessarily -- and I think you testified a
21 little to it earlier. Mr. Ludder had asked you
22 about -- are those sections right there
23 particularly something that would have been

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1 reviewed by the land section -- I mean, by your
2 section, not the Land Division.
3 A. We would have reviewed that, yes.
4 Q. And now as for -- and when you
5 review this, does that kind of -- does that give
6 you notice, at that point, that there are other
7 divisions may be involved?
8 A. Correct.
9 Q. Okay. And at that point, I think
10 he had asked you, do you reach out to those
11 divisions and consult with them over this
12 particular permit?
13 A. Yes.
14 Q. Okay. And I think you had
15 referred -- had testified earlier that you
16 didn't receive -- y'all had done that, but
17 didn't receive a response?
18 A. Say that one more time.
19 Q. That y'all had, like, talked with
20 the other division but didn't receive a response
21 as it pertained to the NPDES permit, I believe.
22 MR. LUDDER: I'll object. He
23 didn't testify to that. That was the

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1 previous witness.
2 THE WITNESS: I don't think I said
3 that.
4 MR. CARTER: Okay. I'm sorry.
5 I'll withdraw the question. I may be
6 thinking further back. But -- okay.
7 BY MR. CARTER:
8 Q. But those sections are present in
9 the operations manual?
10 A. Correct.
11 Q. And now one thing I wanted to
12 clarify, I guess, when we get this, it's titled,
13 The Operations Manual, but at the time we
14 receive this, is there an operational landfill?
15 A. There is an operational landfill,
16 yes. Well, I mean, say that one more time. Is
17 there an operation for the modification --
18 Q. Well, let me rephrase it, yeah.
19 A. -- or just in general?
20 Q. When we receive this operations
21 manual, at that time, is this the requirements
22 that -- the proposals in this manual part of an
23 operational landfill?

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1 A. There was -- there is still an
2 operational phase going on there. I mean, it's
3 the operational plan for the whole landfill, I
4 believe. I don't think it's just for the
5 modification. But there is not anything going
6 on -- operations going in the -- in the modified
7 expansion area.
8 Q. Okay. So -- but when that
9 modified expansion area would become
10 operational, then the -- the terms of the permit
11 would kick in?
12 A. Correct.
13 Q. And then that's when the guidance
14 from the application and everything would kick
15 in as well; is that right?
16 A. Correct.
17 Q. Okay. Now, going along with the
18 operations manual, the slope stability study,
19 and now -- because, I mean, how many pages would
20 you think make up the application? Just a
21 guess? I mean, I'm not asking for an exact
22 number or anything.
23 A. 500, 700, 800, something like

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1 that, in this case. It's not always like that.
2 Q. Okay. So now with each section of
3 those, I think there's -- with the operations
4 manual, with the slope stability study, are
5 there certifications on those?
6 A. Yes.
7 Q. And what type of certifications
8 are those?
9 A. PE stamps.
10 Q. Okay. And what's -- I mean,
11 what's that do? I mean, when you see it, what
12 does that mean to you?
13 A. It means somebody that knows a lot
14 more about this has put their name on the line,
15 their stamp on it, than -- you know, than we do
16 kind of thing, so...
17 Q. And so when you review that
18 information, does that play into any -- any
19 decisions or any -- any -- any -- well, I'll
20 withdraw that question.
21 So wouldn't you say the engineer
22 certification, that gives you some confidence
23 about the information that's been presented to

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1 you; is that right?
2 A. Correct.
3 Q. Okay. I think -- okay. Still on
4 the variances real quick, specific two working
5 faces, I think -- and you have may have
6 mentioned earlier, is that a common practice?
7 A. Two working faces? It's fairly
8 common, that we've got -- we've got a number of
9 them around the state -- I'll put it that
10 way -- that have two working faces. Some -- one
11 of them has three working faces.
12 Q. Okay. And so -- and then -- so
13 this isn't some unique request that the City has
14 made?
15 A. No.
16 Q. Okay. And now what about the
17 three-to-one slope? Is that -- the final slope?
18 A. Yeah, that's even more common than
19 the two working faces.
20 Q. Okay. So, I mean, just if you
21 could guess, how many -- I mean, out of --
22 A. Well, I think about -- over half
23 the facilities in the state have a variance of

Page 483

1 some sort. I think there's 30 to 40 that have
2 three-to -- working faces, and I think somewhere
3 around 12 to 15 or so that have the two working
4 faces. The -- it would be most likely be an MSW
5 landfill with a C&D, and there's only 30 in the
6 state to start with, so about half the MSW
7 facilities have --
8 Q. All right. So this isn't the
9 first time y'all had seen that either?
10 A. Correct. No.
11 Q. Okay. I know you'd answered some
12 questions earlier from Mr. Ludder where you had
13 gone down kind of a list here, as it appears
14 in 35-13-8-.02 [verbatim], okay?
15 A. Yes.
16 Q. What I'm referring to up above it,
17 38 -- 335-13-8-.01, okay?
18 A. Okay.
19 Q. How about --
20 A. Want me to read it? Want me to
21 read it?
22 Q. Sure, go ahead. That'd be fine.
23 A. The whole thing?

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1 Q. Yeah.

2 A. All right. Chapter 8 is

3 Procedures for Variances.

4 335-13-8-.01, Variances.

5 The Department may grant individual

6 variances from the specific divisions of

7 Division 13 based upon the procedures of

8 335-13-8-.02 through 335-13-8-.05 whenever it is

9 found by the Department, upon presentation of

10 adequate proof, that non-compliance with

11 Division 13 will not threaten the public health

12 or unreasonably create environmental pollution.

13 Q. And based on your review of the

14 information contained in the permit application

15 and the draft permit as prepared by Mr. Kelly,

16 did you believe there was adequate proof that

17 noncompliance with Division 13 wouldn't threaten

18 public health or unreasonably create

19 environmental pollution?

20 A. Yes, we were.

21 Q. Okay. You were asked earlier on

22 several of these under Section 2 of the

23 35 -- of 335-13-8-.02, which is titled, Petition

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1 for Variance --

2 A. Yes, sir.

3 Q. -- under those, you were asked a

4 couple of times about whether you could

5 personally point to a -- somewhere in the

6 application that would show a clear and complete

7 statement of the precise extent of the relief

8 sought, including specific identification of the

9 particular provisions of the regulations from

10 which the variances are sought.

11 Now, is it possible to point to a specific

12 place?

13 A. It -- not in this case, no.

14 Q. And why would that be?

15 A. They've kind of -- because they

16 requested it as part of the whole modification,

17 it's just kind of in there in different places

18 when they were discussing it. It wasn't a

19 separate request.

20 Q. Okay. And you were -- and you

21 were asked if you could point out a specific

22 assessment with supporting factual information

23 that the impact -- the variance would pose on

Page 486

1 the public health and the environment in the

2 affected areas. Is that -- is it possible to

3 point out a specific place in the permit

4 application?

5 MR. LUDDER: Your Honor -- can I

6 get a clarification of which variance

7 you're talking about? Or both?

8 MR. CARTER: I mean both. I mean,

9 your question -- it was the same set

10 of questions on both variances.

11 MR. LUDDER: But are you

12 talking -- are you questioning him

13 about both variances?

14 MR. CARTER: Right, about both

15 variances in this situation.

16 A. It is possible, but in this case

17 though, it's not necessary, because like I said,

18 it's in there.

19 Q. Okay. And then I think the other

20 one was you were asked to point out a concise

21 factual statement of the reasons the Petitioner

22 believes that noncompliance with the -- I mean,

23 with the -- the City believes that the

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1 noncompliance with the particular provisions of

2 Division 13 will not threaten the public health

3 or unreasonably create environmental pollution.

4 And are you able to do that?

5 A. It -- you can, at times. In this

6 case, like I said, it's not necessary, and, you

7 know, I'd argue that you're not really required

8 to.

9 Q. Okay. Just to make sure I'm

10 understanding you right, you're basically saying

11 that the application is taken as a whole? It's

12 not -- your determination and your review of

13 whether the variances -- you would recommend the

14 variances would be based on what you read in the

15 entire application?

16 A. Correct.

17 Q. Okay. And the reason I keep -- I

18 asked you -- now you said -- you testified you

19 reviewed this permit; is that right?

20 A. Correct.

21 Q. Okay. Who has the final say

22 on -- on issuance of a land permit?

23 A. The Chief of the Land Division.

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1 Q. Okay. And who would that be?

2 A. Phil Davis, sitting

3 beside -- beside you, I guess, if that's the

4 correct way to do it.

5 Q. Okay. And you forward your

6 recommendations onto --

7 A. Correct.

8 Q. Okay.

9 MR. CARTER: Nothing further right

10 now, Your Honor.

11 HEARING OFFICER: Mr. White?

12 CROSS-EXAMINATION

13 BY MR. WHITE:

14 Q. Mr. Story, just real quick.

15 A. Sure.

16 Q. Mr. Carter asked you some

17 questions about what constitutes the application

18 for the permit modification that was submitted

19 by the City of Dothan, and you mentioned the

20 operations manual, the stability study, the

21 three-page application form. And if you would,

22 please, turn to 335-13-5.

23 A. I'm not sure I've got 5 up here.

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1 5 was the one we didn't have a while ago.

2 Q. Okay.

3 A. I think you read it -- well, we

4 started reading it last time. We didn't -- I

5 don't have 5.

6 Q. Okay. Well, let me just ask you

7 without introducing it. We sent it to

8 regulations for the permit application

9 requirements. Are the facility design plans

10 included in the permit application requirements?

11 A. Yes, they are.

12 Q. Okay. And are those on the table

13 in front of you?

14 A. Yes -- well, there's a set of

15 plans that are for that.

16 Q. Okay. Would you look at them and

17 see if that was part -- those that you reviewed

18 as part of this --

19 A. Yes.

20 Q. Those are?

21 A. Yes.

22 Q. Okay. So in addition to the

23 documents Mr. Carter described, these were also

Page 490

1 part of the application?

2 A. Yes. He did not mention that when

3 he was asking me. You're right.

4 MR. WHITE: Okay. That's all.

5 HEARING OFFICER: That's all?

6 MR. WHITE: Yes, sir.

7 HEARING OFFICER: Okay. And that

8 was Petitioners' Exhibit 5?

9 MR. LUDDER: 5, correct.

10 HEARING OFFICER: Thank you.

11 Redirect?

12 MR. LUDDER: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. LUDDER

15 Q. Now, you just agreed that you had

16 seen Respondent's Exhibit R-1 for

17 identification. Can you tell from this exhibit

18 what the date was that the Corps of Engineers

19 issued a discharge of fill permit?

20 A. The date on this is November 9th,

21 '15, on this document.

22 HEARING OFFICER: What was that? I

23 didn't hear you.

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1 THE WITNESS: I'm sorry. I don't

2 have my water anymore. November 9th

3 of 2015 was the date on this document.

4 BY MR. LUDDER:

5 Q. Somebody need to get you some

6 water?

7 A. I'll try to do better.

8 Q. Okay. November 9th, 2015, and on

9 the second page of Exhibit R-1 for

10 identification, there is a letter, apparently

11 from City of Dothan. Do you see that?

12 A. I do.

13 Q. What's the date of that?

14 A. November 12th, 2015.

15 Q. So that's after the permit was

16 issued, correct?

17 A. That was after this permit?

18 Q. After the Corps of Engineers'

19 permit was issued, correct?

20 A. Yes, sir.

21 Q. So do you think that that letter

22 is part of the permit, the Corps of Engineers'

23 permit?

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1 A. It is information that we
2 would -- we would use as part of -- it's a box
3 that we check to make sure it got done, let me
4 put it that way. I think at the end of the day,
5 in our -- the final operating record, it would
6 be part of that, sure.
7 Q. Respondent's Exhibit Number 1, was
8 that provided to the Department by the City, or
9 the Corps of Engineers?
10 A. This one right here?
11 Q. Yes.
12 A. I'm guessing they sent -- this is
13 what was sent to us from the City of Dothan. Am
14 I --
15 Q. Well, is the Exhibit R-1, was that
16 sent to ADEM by the City of Dothan, or the Corps
17 of Engineers?
18 A. It -- unless I'm just
19 misunderstanding your question, it appears that
20 the City of Dothan sent it to us.
21 Q. Okay, okay. And does that explain
22 the letter on Page 2 of that exhibit?
23 A. Correct.

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1 Q. Okay. So that letter is not part
2 of the permit, but it is part of your files? Is
3 that what you're saying?
4 A. Well, you know --
5 Q. I'm sorry. Not part of the Corps
6 of Engineers' permit, but part of ADEM's files?
7 A. It ends up in our files, correct.
8 Q. Do you know that to be part of the
9 Corps permit? That letter?
10 A. Is this letter part of the Corps
11 permit? I do not know that.
12 Q. Okay.
13 A. You know, there's other people
14 that know more about the Corps permit than I do.
15 Q. Who would that be?
16 A. The people that work for the Corps
17 in the field office, probably.
18 Q. The field office?
19 A. Yeah.
20 Q. Okay. Did you have a chance to
21 review what has been marked as Exhibit J-9,
22 Joint Exhibit Number 9, the Joint Public Notice?
23 A. Joint Public Notice? Between the

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1 Corps and our field office? Is that what -- is
2 that Number 9? If it is -- if it is, I've seen
3 it.
4 MR. SASSER: Just let him show it
5 to you.
6 Q. You have seen it?
7 A. Well, if you're going to...
8 Q. Yeah.
9 A. It's the Joint Public Notice from
10 the Corps and ADEM on proposed discharge of fill
11 materials into waters of the US.
12 Q. And have you seen that before?
13 A. I believe I have seen that before.
14 Q. Was that -- that was after the
15 permit -- the solid waste permit application was
16 submitted to ADEM, correct?
17 A. Correct, yes.
18 Q. All right. What would have been
19 the occasion that you saw this then, if it was
20 after the -- the permit application was
21 submitted?
22 A. Whenever the City would get
23 information that was part of that, they would

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1 forward it to us. So, again, that's a box we
2 got to check. You know, whenever -- not
3 everything -- there's stuff that runs concurrent
4 with us going through this process. Some of it
5 is Fish and Wildlife stuff, some of it is Corps
6 stuff. And this is -- as we're running through
7 the process, there are parallel tracks moving
8 through.
9 Q. Okay. And would that have been
10 received by ADEM before issuance of the final
11 solid waste landfill permit?
12 A. Say that one more time.
13 Q. Would Exhibit J-9, would it have
14 been received by ADEM before issuance of the
15 final solid waste permit, J-1?
16 A. It was, if that's what you're
17 asking. Or does it have to be?
18 Q. I'm sorry. Yeah, it was --
19 A. Yes.
20 Q. -- received before?
21 A. Yes.
22 Q. Attached to Exhibit J-9 is another
23 map.

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1 A. Okay.
2 Q. Do you see that?
3 A. Yes, sir.
4 Q. Does that map show impacted
5 wetlands and streams?
6 A. This map shows a project area, and
7 it identifies 4.37 acres of wetlands.
8 Q. And --
9 A. And 2.5 [verbatim] acres of
10 impacted area. Is that what you're asking?
11 Q. Now, that's 2.25 acres of
12 wetlands?
13 A. Impact area, and 4.37 acres of
14 wetlands.
15 Q. All right.
16 A. I'm not sure which one you're
17 asking about.
18 Q. All right.
19 A. The stream, I guess, would be
20 the -- this area, and they give it in linear
21 feet as well, but the wetlands is 4.37.
22 Q. All right. Let's differentiate
23 between impacted and nonimpacted areas.

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1 Impacted areas are shown by hatched -- hatch
2 marks?
3 A. It's got a grid over it of some
4 sort.
5 Q. All right.
6 A. And wetlands is shaded, and the
7 whole thing is shaded so, you know, it's tough
8 to figure out where that is.
9 Q. Because of the shade?
10 A. Well, yeah, because it's not in
11 color.
12 Q. Yeah, it's not in color.
13 MR. CARTER: I think -- David,
14 wasn't that the colored -- the map
15 that you entered into evidence
16 yesterday with Mr. Kelly?
17 THE WITNESS: It looks very similar
18 to the one we looked at. It's the
19 second one earlier today.
20 MR. LUDDER: Exhibit P-4.
21 HEARING OFFICER: Is that the same
22 one?
23 THE WITNESS: It is, and it's in

Page 498

1 color, yes. It's the exact same map.
2 BY MR. LUDDER:
3 Q. And both say, Figure 5: Proposed
4 Impact Map?
5 A. Right, correct. And we've gone
6 over this one earlier today too, I believe.
7 Q. Okay. Now, I believe that the
8 maps that we discussed earlier, the site
9 boundary was much larger --
10 A. You're right. Correct. It was
11 over here.
12 Q. -- than this; is that right?
13 A. Correct.
14 Q. And so this map shows just the
15 proposed municipal solid waste expansion area,
16 correct?
17 A. Correct.
18 Q. And so the amount of wetlands that
19 are to be impacted in the expansion area are how
20 many acres?
21 A. Say it one more time. Am I
22 looking at the impact areas or wetlands? Which
23 one?

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1 Q. I'm talking about the impact area,
2 the hatched mark.
3 A. Okay.
4 Q. How many acres are included in
5 that hatched mark?
6 A. 2.25 acres.
7 Q. All right. Does this table over
8 here say, Proposed Impacts?
9 A. It does.
10 Q. And how many acres does it say of
11 wetlands are to be impacted?
12 A. It actually says 2.25.
13 Q. Okay. And in terms of ephemeral,
14 intermittent, and intermittent streams, does it
15 say how many linear feet of impacted area?
16 A. Yes.
17 Q. How many is that?
18 A. You want the total for each one?
19 Q. Yes, give the total.
20 A. 1160.
21 Q. 1160? Okay. So that -- those
22 numbers are different from the ones we discussed
23 previously when we had a larger site area in the

Page 500

1 diagram?

2 A. Yes, I think the numbers are

3 different. Correct.

4 Q. Okay. Now, looking at Exhibit R-1

5 for identification, which is the document, at

6 least, containing the Corps permit that the

7 Department received, correct?

8 A. (The Witness nodded).

9 Q. Does it say on Page 1 of

10 the -- and I'm referring to Page 1 as shown at

11 the bottom of the page rather than the first

12 page of the document -- does it say on Page 1

13 that -- what the permit is authorizing be done?

14 A. It says -- the sentence -- You are

15 authorized to perform work in accordance with

16 the terms and conditions specified below.

17 Is that what you're asking?

18 Q. And where are you reading that

19 from? Okay. And could you describe the project

20 area? Or project location?

21 A. The Project Location: The

22 approximately 40 acre expansion parcel is

23 located south of the City of Dothan's existing

Page 501

1 landfill in Dothan, Houston County, Alabama.

2 Specifically -- keep going?

3 Q. Yeah, you might as well.

4 A. Okay.

5 Specifically, the site is located at

6 latitude 31.2353 North and longitude 85.3512

7 West in Sections 16 and 17, Township 3 North,

8 Range 27 East. The area is depicted on the

9 Dothan East, Alabama Quad -- Quadangle; United

10 States Geological Survey Topographic Map and is

11 situated within the Apalachicola River watershed

12 HUC 03130004.

13 Q. Okay. So is that the same

14 municipal solid waste landfill expansion that

15 we've been talking about throughout this

16 proceeding?

17 A. I would think so.

18 Q. Now, they refer to it as a

19 "40-acre expansion parcel." Do you recall what

20 the acreage is on the expansion parcel that you

21 permitted?

22 A. I -- I do not.

23 Q. All right.

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1 A. Do you want me to find the permit?

2 Q. It's P-1. Yeah.

3 A. P-1 -- I'll leave that open. It

4 doesn't say how much we -- on the rationale -- I

5 mean, on the determination, it says, The

6 proposed modification would expand the total

7 acreage of the facility to 534...and increases

8 the MSW disposal area to 75.6 acres. The C&D

9 would increase 13.6 acres.

10 Q. All right. Now, that 75.6

11 represents both the existing landfill and the

12 expansion parcel, correct?

13 A. Right, right.

14 Q. Can you look at the next -- the --

15 A. Is that it? It should be -- it

16 should be right --

17 Q. -- Joint Exhibit Number 2, and

18 can you identify what that is?

19 A. This is the previous permit before

20 the modification.

21 Q. And how much acreage of municipal

22 solid waste landfill was authorized in that

23 permit?

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1 A. 55 acres.

2 Q. So the difference between the

3 permit that was just issued in 2016, which

4 was -- the acreage was indicated, the 75.6 acres

5 for the municipal waste landfill, compared to

6 the previous permit of 55 acres? Do you know

7 what the difference is?

8 A. I do not. I went to Elmore

9 County, but I'm going with 20.6 acres; is that

10 right? 75, 55, .6?

11 Q. It's approximately 20 acres, isn't

12 it?

13 A. 20.6 acres, yes.

14 Q. 20.6 acres? All right. Do you

15 know why the Corps of Engineers referred to an

16 area of 40 acres?

17 A. Maybe they're not using all of it

18 for disposal. There's buffer zones and stuff

19 too. Maybe it's not all part of it. That's

20 going off the top of my head.

21 Q. Could you explain that on this

22 map, P-4, what you're talking about?

23 A. If -- if you're still -- you know,

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1 I'm just assuming. I don't know without looking
2 at -- going back through it.
3 Q. Let me withdraw the question.
4 A. Okay.
5 Q. The area marked in a red line on
6 Exhibit P-4, that's the expansion area, correct,
7 landfill expansion area?
8 A. It appears to be.
9 Q. Okay.
10 A. This is not -- I mean, you know,
11 the application is here, and this is in this
12 document, but it appears that it's the same
13 area.
14 Q. Right. And would you assume that
15 that area is the 20.6 acres, more or less?
16 A. I would say the 20.6 acres that
17 they're adding is in this area right here, yes.
18 Q. Within the red boundary?
19 A. Within the -- yeah. More than
20 likely.
21 Q. All right. Now, if the Corps is
22 talking about 40 acres, they've got to be
23 talking about a lot more acres than are shown in

Page 505

1 the red boundary line, correct?
2 A. I don't know. I mean, I don't
3 know if it goes -- if the disposal acres is only
4 this area here, there could be another 20 acres
5 around it or something. I don't know. Does
6 that make sense?
7 Q. Oh, I see. You're saying that
8 20.6 acres may just be a disposal area?
9 A. In the 40 acres, yes.
10 Q. In the 40 acres? And you think
11 this red line boundary might actually be larger
12 than 20.6 acres?
13 A. That's -- that's what I'm
14 thinking.
15 Q. Okay, okay. Now, would you read
16 the second sentence under Project Description in
17 Exhibit J -- excuse me -- Exhibit R-1. Second
18 sentence?
19 A. Second sentence under Project
20 Location -- Description?
21 Q. Project Description.
22 A. Okay. Well, I read Location
23 already, right?

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1 Q. Right. Just the second sentence.
2 A. Second sentence?
3 This permits authorizes the permanent
4 discharge of fill material into 2.25 acres
5 of -- I don't know how to pronounce that -- some
6 kind of wetlands -- 270 linear feet of
7 intermittent stream, and 890 linear feet of
8 ephemeral stream.
9 Q. Okay. Now, that permit is not a
10 permit issued by ADEM, is it?
11 A. This Corps permit?
12 Q. Yes.
13 A. No, there's a joint -- joint
14 something with ADEM, but...
15 Q. I'm sorry?
16 A. There's -- one of it is joint with
17 our field office, but I don't think this one is.
18 Q. Are you talking about the Joint
19 Public Notice?
20 A. Maybe it's the Joint Public
21 Notice. There you go. I'm sorry. But you're
22 right.
23 MR. LUDDER: The Petitioners move

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1 the admission of Exhibit R-1.
2 HEARING OFFICER: It's your
3 exhibit. Any objection?
4 MR. CARTER: No.
5 MR. WHITE: What is that?
6 HEARING OFFICER: R-1 is the NPDES
7 permit.
8 MR. LUDDER: No, it's the Corps
9 permit.
10 THE WITNESS: It's the Corps
11 permit.
12 HEARING OFFICER: Oh, excuse me.
13 The Corps permit.
14 MR. WHITE: No objection.
15 HEARING OFFICER: It's admitted.
16 (Exhibit No. R-1 was admitted
17 into evidence.)
18 MR. CARTER: Your Honor, I
19 think -- I didn't offer R-2 as well.
20 That was the regulations on variances.
21 THE WITNESS: R-2 is --
22 HEARING OFFICER: It's admitted.
23

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1 (Exhibit No. R-2 was admitted
2 into evidence.)
3 THE WITNESS: -- is 8, variances
4 stuff.
5 HEARING OFFICER: Redirect -- I
6 mean, recross?
7 MR. CARTER: Just briefly, Your
8 Honor.
9 MR. LUDDER: Oh, no, I'm not
10 finished.
11 MR. CARTER: Oh, I'm sorry. Go
12 ahead.
13 BY MR. LUDDER:
14 Q. Now, you testified about
15 alternative daily cover, about how it's quite
16 common in Alabama for the Department to
17 authorize it?
18 A. Yes, sir.
19 Q. You also testified earlier that no
20 notice to the public would be given about
21 those -- those variances?
22 A. It depends on how we get the
23 request in. I mean, in this case, the two

Page 509

1 variances we did were part of the notice, but
2 generally, they're not.
3 Q. I'm sorry?
4 A. They're not required to be, but in
5 this case, the two variances that were issued
6 were part of the public notice for this major
7 mod. So, in essence, it can be. Or if we do a
8 variance as part of a renewal, it's part of that
9 notice as well. So a lot of times, they are.
10 Generally -- most of the times they are. In
11 some cases they're not required to be -- they're
12 not required to be. Does that make sense?
13 Q. All right. So if an applicant
14 such as the City of Dothan has a permit now, as
15 it does --
16 A. Correct.
17 Q. -- and they seek authorization to
18 use alternative cover, would you do a public
19 notice on -- on a variance to grant that
20 authorization?
21 A. No, sir. We would not be required
22 to.
23 Q. You would not? Now, you referred

Page 510

1 to -- you just gave some testimony about two
2 working faces at the -- at the landfill. Are
3 you changing your testimony, your prior
4 testimony, where you indicated that the permit
5 authorizes two working faces at the C&D
6 landfill?
7 MR. WHITE: I'm going to object to
8 the -- you know, what he testified to.
9 I mean, if he wants to ask him a
10 question, fine, but if he's going to
11 incorporate some alleged prior
12 testimony into it, I'm going to
13 object.
14 HEARING OFFICER: I don't know
15 whether he's changing his testimony or
16 not. Do you know? Do you remember
17 what you testified to?
18 THE WITNESS: I don't, I don't.
19 HEARING OFFICER: Okay.
20 MR. LUDDER: Okay.
21 BY MR. LUDDER:
22 Q. And you have referred to a soil
23 stability analysis, I believe, is what you

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1 called it?
2 A. Or a study.
3 Q. Or excuse me, a study.
4 A. Yeah, it's in one of your things
5 here.
6 Q. Okay. Would you look at that
7 study and give us the proper name or the given
8 name for that study?
9 A. Do you know which -- which one
10 it's in? Or do you want me to dig through all
11 these?
12 Q. That would be J-3, Part II, I
13 believe.
14 MR. WHITE: I'm going to object to
15 the designation of "It's a soil
16 study." I mean, it says what it is,
17 and it doesn't say that.
18 MR. LUDDER: That's what he called
19 it, and I'm just trying to clarify it.
20 MR. WHITE: Well, let's clarify it.
21 MR. LUDDER: That's what he's
22 doing.
23 THE WITNESS: Okay.

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1 MR. WHITE: Yeah, would you clarify
2 it, please, what it is?
3 THE WITNESS: It is the Static
4 Stability Analysis.
5 MR. WHITE: Thank you.
6 HEARING OFFICER: Static?
7 THE WITNESS: Yes. Static
8 Stability Analysis.
9 HEARING OFFICER: Thank you.
10 BY MR. LUDDER:
11 Q. Now, you also testified that you
12 believed that erosion was addressed -- was
13 probably addressed in that analysis; correct?
14 A. Yes.
15 Q. All right. Would you look through
16 there and see if you can find it?
17 MR. WHITE: Judge, I'm going -- it
18 looks like about 300 pages. Are we
19 going to recess to allow him to do
20 that?
21 HEARING OFFICER: Overruled.
22 MR. LUDDER: Sure.
23 THE WITNESS: All right.

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1 BY MR. LUDDER:
2 Q. Well, or you can just answer me
3 this: Do you know or not know whether erosion
4 is addressed?
5 HEARING OFFICER: I think you asked
6 him if he can look through there and
7 find it.
8 MR. LUDDER: Yeah, I did. I'm just
9 saying I'll withdraw that question.
10 HEARING OFFICER: Okay.
11 BY MR. LUDDER:
12 Q. And ask you: Do you know if
13 erosion is addressed in that document?
14 A. I do not know specifically if
15 erosion is addressed in the document.
16 Q. Okay. Now, you testified that you
17 make a recommendation on the draft permit to
18 your Land Division Chief, Mr. Phillip Davis,
19 correct?
20 A. Correct.
21 Q. What was your recommendation in
22 this case?
23 A. To issue it. I thought it was

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1 protective of human health and environment.
2 Q. Was your recommendation to issue
3 it as it had been drafted and gone to public
4 notice?
5 A. I think it was.
6 Q. That was your recommendation?
7 A. I believe so. It's been a long
8 time.
9 Q. Did you make any changes to the
10 draft permit when you --
11 A. The one that -- since it came
12 off -- the permit that came off of the notice?
13 Q. Yeah, in the -- in the notice,
14 there was included a draft permit, correct?
15 A. Correct.
16 Q. And Exhibit J-1 is the final
17 permit that was issued. Were there any changes
18 between the two?
19 A. I don't -- I don't recall. I
20 don't think so. I don't recall though.
21 Q. Okay. And do you know what
22 Mr. Davis's final decision was with regard to
23 your recommendation?

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1 A. We have a signed copy of the
2 permit, so...
3 Q. And did he sign it?
4 A. Yes, he did.
5 MR. LUDDER: Okay. No further
6 questions.
7 HEARING OFFICER: Recross?
8 RECROSS EXAMINATION
9 BY MR. CARTER:
10 Q. Just where you mentioned a few
11 minutes ago in response to one of Mr. Ludder's
12 questions about you thought it was -- the Corps
13 permit. He asked you about the joint notice,
14 but part of that permit actually -- well, I
15 withdraw that question.
16 Does the Department do a Water Quality
17 Certification as part of the permit -- Corps
18 permit?
19 A. Yes, they do.
20 Q. Okay. And in terms of that, also
21 there was a joint public notice issued?
22 A. Correct.
23 MR. CARTER: Okay. Nothing

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1 further.
2 HEARING OFFICER: Mr. White?
3 MR. WHITE: Yes, sir.
4 RE CROSS EXAMINATION
5 BY MR. WHITE:
6 Q. If you would look at Chapter 5, or
7 Section 5, of the operations manual, P-3
8 [verbatim], and if you could identify the name
9 of that chapter?
10 A. Chapter 5 is Water Management.
11 Q. And what is Section 5.4 of that
12 chapter?
13 A. Stormwater Runoff Control.
14 Q. Does that relate to erosion?
15 A. Yes, it does.
16 MR. WHITE: That's all.
17 HEARING OFFICER: May this witness
18 be excused? Y'all may -- are y'all
19 going to recall him?
20 MR. SASSER: Yeah, he can be
21 excused.
22 HEARING OFFICER: Is he excused
23 from the rule?

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1 MR. SASSER: Yes. May he be
2 released? Because I think he's got
3 places to go.
4 HEARING OFFICER: Certainly.
5 THE WITNESS: I'm going to
6 Huntsville.
7 HEARING OFFICER: Have a good trip.
8 THE WITNESS: Thank you.
9 HEARING OFFICER: David, do you
10 want to go with your next one, or do
11 you need a break?
12 MR. LUDDER: I'm good.
13 HEARING OFFICER: All right. Call
14 your next witness.
15 MR. LUDDER: All right. Let me
16 call Vernetta Holdren.
17 (A brief recess was taken.)
18 HEARING OFFICER: All right. We
19 are ready and back on the record.
20 Ms. Holdren, our court reporter will
21 swear you in, if you'll raise your
22 right hand.
23 THE WITNESS: Okay.

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1 (The Witness was duly sworn.)
2 HEARING OFFICER: If you will speak
3 up, please, I'm hard of hearing.
4 THE WITNESS: Okay. Yes, sir.
5 DIRECT EXAMINATION
6 BY MR. LUDDER:
7 Q. Will you please state your name?
8 A. Vernetta Holdren.
9 Q. Ms. Holdren, my name is David
10 Ludder. I represent the Petitioners concerning
11 a challenge to the sanitary landfill -- excuse
12 me -- the solid waste landfill permit issued to
13 the City of Dothan. Would you tell us in what
14 part of ADEM you are employed?
15 A. I work in the Water Division in
16 the industrial general NPDES permitting Section.
17 Q. Okay. And what are your
18 responsibilities there?
19 A. To review applications for general
20 NOIs.
21 Q. Could you tell us what NOIs are?
22 A. The NOIs are basically the forms
23 that a facility would submit to request coverage

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1 under an individual -- I mean, not
2 individual -- general NPDES permit.
3 Q. And what does "NOI" stand for?
4 A. Notice of intent.
5 Q. Okay. And any other
6 responsibilities?
7 A. Also to draft up general NPDES
8 permits, review enforcement documents also,
9 inspections by field office area, and to take in
10 complaints --
11 Q. Okay.
12 A. -- dealing with
13 stormwater -- general stormwater issues.
14 Q. So you have a pretty broad area of
15 responsibility?
16 A. I do. I do. The area that I
17 handle, of course, is separated by counties, but
18 I handle what I would call the southeastern
19 portion of the state.
20 Q. All right. Which includes Dothan?
21 A. Dothan, uh-huh.
22 Q. Okay. Let me show you, in one of
23 these exhibit books, Joint Exhibit Number 14 and

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1 ask you -- ask if you can identify that
2 document.
3 A. Yes. That's the cover page of our
4 general stormwater permit to the City of Dothan
5 sanitary landfill.
6 Q. All right. Would you look beyond
7 the cover page and tell us if that is the
8 complete permit?
9 A. Give me a minute. Yes, sir. I
10 would say it is.
11 Q. Okay. And I'm sorry to ask you
12 again, perhaps -- is this a permit for the
13 Dothan landfill?
14 A. Yes, sir.
15 Q. Okay. And what kind of a permit
16 is it?
17 A. It's a general NPDES stormwater
18 permit.
19 Q. Stormwater permit?
20 A. Yes, sir.
21 Q. Is it a permit for the discharge
22 of fill material into wetlands?
23 A. No, sir.

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1 Q. Is it a permit for the discharge
2 of fill material into streams?
3 A. No, sir.
4 Q. Okay. Attached to the permit, or
5 perhaps part of the permit, is the Notice of
6 Intent?
7 A. Yes, sir.
8 Q. Could you turn to that? Is a map
9 of the proposed discharge points supposed to be
10 provided with a Notice of Intent?
11 A. Well, we ask for, at the back of
12 it, for a map, and it's basically just the
13 drawing of the facility and then the major
14 highways. I would say as long as I've been
15 here, we would like it, but it's not actually a
16 requirement of where the discharge points would
17 be.
18 Q. Okay. Is there a map provided
19 with this NOI?
20 A. Not for this NOI, which is the
21 modification. There was one for the reissuance.
22 Q. So there was an earlier
23 reissuance --

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1 A. Yes, sir.
2 Q. -- of the stormwater permit?
3 A. Yes, sir.
4 Q. And with that NOI there was a map?
5 A. There was a general map that was
6 attached to it that showed basically where the
7 landfill is, as far as the highways and
8 everything like that.
9 Q. All right. Would that map show
10 discharge points?
11 A. No, sir.
12 Q. No? On Page 5 of 7 of the NOI, in
13 the bottom half of that page, there are
14 coordinates listed. Are those the coordinates
15 of the discharge points for stormwater?
16 A. It -- it is, according to what we
17 were asking them. This is the latitude and
18 longitude of the point where it's discharged and
19 exits your property. Also, sometimes, we ask
20 them to show us or give us the coordinates for
21 the sampling point. Sometimes your sampling
22 point would be different from your discharge
23 point. Your discharge point would, of course,

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1 be the point where the stormwater exits your
2 property. But if there is no clean way to get a
3 clean sample, they may have to move their sample
4 point in. And so, therefore, sometimes that
5 would be technically, your sample point, or your
6 discharge point on your Notice of Intent.
7 Q. Okay. Did you make an attempt to
8 identify on a map where these coordinates are?
9 A. We -- I did as far as looking at
10 them to make sure that the area would coordinate
11 with what they stated as far as the longitude
12 and latitude that they gave us. We have this
13 Google map so -- and on that map, just showing
14 to make sure that the receiving stream that they
15 put down was close to what exactly what the
16 point would be discharged into.
17 Q. So the receiving stream that they
18 put down in each of these cases, it looks to me
19 like it's an unnamed tributary of Golf Creek?
20 A. Of Golf Creek.
21 Q. And the purpose of you looking on
22 Google maps was to determine that the
23 coordinates they gave are close enough to the

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1 tributary to say that that's probably where --
2 A. Correct, because you have some
3 facilities that have a couple different water
4 bodies of the State by the facilities, and we're
5 just trying to make sure that it's draining to
6 that correct creek.
7 Q. Okay. I don't know if you recall
8 from your work. If you look at Exhibit P-5,
9 the -- we have a diagram of -- a Boundary
10 Sketch, it's called, of the landfill facility.
11 It includes an existing landfill, and a proposed
12 landfill expansion. Do you recall from your
13 work where Golf Creek is?
14 A. On the map that was submitted with
15 the reissuance, there was something coming
16 through here, I think. But off of this map, I
17 really can't tell.
18 Q. Off of this map, you can't tell?
19 Can you tell where the unnamed tributaries of
20 Golf Creek are that they're referring to?
21 A. Well, from -- okay. The unnamed
22 tributaries as far as what the -- the
23 points -- see, that's the thing. The points

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1 itself, I want to say, were over in this area,
2 in the --
3 Q. And you're pointing to the east
4 of --
5 A. Yes, sir.
6 Q. -- the pink area and the green
7 area?
8 A. According to -- now, the
9 first -- yeah. Yeah, over in this area.
10 Q. All right. And "this area,"
11 you're still pointing to the east of the pink
12 area and the green area, correct?
13 A. Correct.
14 Q. You're not pointing to any area
15 within the green area; is that right?
16 A. So I didn't have a map for the
17 modification, but as far as Google Earth, they
18 were still -- you had one up here, which was the
19 existing one, and then coming on around here
20 when I checked it, so...
21 Q. All right. My question is: Do
22 you recall any points being within the green
23 area? This is the landfill expansion. Do you

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1 recall any points -- discharge points being
2 found within that green area?
3 A. Let's see. I can't remember. I
4 can't really remember on that end.
5 Q. Okay. That's fine. In Exhibit
6 P-5, there is a diagram labeled, Base Grading
7 Plan Municipal Solid Waste Expansion, and it's
8 marked as Sheet Number 3. Have you seen this
9 diagram before?
10 A. No, sir.
11 Q. You have not?
12 A. Uh-uh (negative response).
13 Q. Did the Solid Waste Branch refer
14 any information to you about the stormwater
15 runoff from this proposed expansion?
16 A. No, sir.
17 Q. Okay. Are you an engineer?
18 A. No, sir. I'm an environmental
19 scientist.
20 Q. Environmental scientist?
21 A. Yes, sir.
22 Q. Okay. Have you seen drawings like
23 this before?

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1 A. I have.
2 Q. All right. On this drawing, there
3 are three sediment ponds shown. Do you see
4 that?
5 A. Uh-huh (affirmative response).
6 Q. And there are also, associated
7 with each sediment pond, an overflow spillway.
8 Do you see that?
9 A. Uh-huh, yes, sir.
10 Q. Would those be the discharge
11 points that are covered by the general NPDES
12 permit that you worked on?
13 A. Are these -- would this be the
14 area -- because they're covered for stormwater
15 discharges that do not contain leachate from
16 active and inactive landfills.
17 Q. Right.
18 A. So if that area does not contain
19 leachate, that should be the stormwater points.
20 And you're seeing here?
21 Q. There's an overflow spillway
22 there, a spillway here, and a spillway here. So
23 are those the discharge points that you think

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<p>1 are covered by the NPDES general permit that you 2 worked on? 3 A. I would say -- I think so, but we 4 don't actually review those type of plans. 5 Q. Okay, okay. 6 A. I'll put it like that. We just go 7 by the coordinates, which are provided for -- on 8 the Notice of Intent. 9 Q. Okay. 10 A. So I can't honestly say yes or no 11 on that. 12 Q. Okay. Do you know that -- was any 13 information provided to you that the landfill 14 expansion was going to include sediment ponds? 15 A. Not on our information -- not on 16 our side. 17 Q. No? So the NOI doesn't indicate 18 sediment ponds? 19 A. Not that I can remember. However, 20 there may be a question as far as Best 21 Management Practices or controls, and it may 22 have been mentioned as another. But I can't say 23 that the 2015 application -- without looking at</p>	<p>1 the stormwater runoff from petroleum storage and 2 fueling areas onsite. 3 Q. All right. 4 A. Page 5 is the uncontaminated 5 stormwater from equipment maintenance and 6 storage and petroleum storage and handling 7 areas. 8 This particular outfall is more of a 9 certification outfall. It's not a monitoring 10 outfall. 11 Q. Okay. 12 A. Page 6 is the exterior vehicle, 13 automobile, and equipment exterior washing 14 operations that do not use solvents and have not 15 come in direct contact with solid waste at the 16 facility. 17 Q. All right. And those are all the 18 outfalls that are authorized by this permit? 19 A. Yes, sir. 20 Q. And not one of those refers to the 21 discharge of fill material into wetlands? 22 A. No, sir. 23 Q. And not one of them refers to the</p>
Page 529	Page 531
<p>1 it to see if there was a sediment pond 2 mentioned. 3 Q. Okay. All right. Now, the -- now 4 Exhibit J-14, which we were looking at, which I 5 believe I just threw away. Yeah. That 6 specifies the types of discharges that are 7 authorized, correct? 8 A. Yes, sir. As far as -- the 9 outfalls, you're asking -- describe the outfalls 10 in the permit? 11 Q. What kind of discharges are 12 authorized by that permit? 13 A. By this permit, you have 14 the stormwater -- stormwater discharges which do 15 not contain leachate from active or inactive 16 landfills, transfer stations; including land 17 disturbance activities associated with opening 18 and closing cells -- 19 Q. And you're looking at Page 3, 20 right now? 21 A. Yes, sir. 22 Q. Okay. 23 A. So going to Page 4, this describes</p>	<p>1 discharge of fill material into streams? 2 A. Correct. 3 Q. Correct? 4 A. Correct. 5 Q. Is it possible that someone else 6 in your division might have received information 7 from the Solid Waste Branch about this proposed 8 facility? 9 A. Yes. 10 Q. Any idea why it would not come to 11 you? 12 A. I don't. 13 Q. Should it have come to you? 14 A. It would have. If -- I'm saying 15 if we did receive it. Nine times out of ten, if 16 upper-level management receives anything from 17 another division, it trickles down to the 18 technical staff, which I -- I'm that person for 19 that area. 20 Q. Right. 21 A. So if I didn't receive anything or 22 get anything, nine times out of ten, I'm saying 23 that upper-level management did not receive</p>

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1 anything.
2 Q. Right.
3 MR. LUDDER: No further questions.
4 HEARING OFFICER: Cross?
5 MR. CARTER: No questions.
6 HEARING OFFICER: Mr. White?
7 MR. WHITE: No.
8 HEARING OFFICER: May this Witness
9 be excused?
10 MR. LUDDER: Yes, Your Honor.
11 MR. SASSER: Sure, absolutely.
12 HEARING OFFICER: You're excused.
13 MR. LUDDER: I move the admission
14 of J-14.
15 HEARING OFFICER: All right. What
16 was that?
17 MR. LUDDER: It was the NPDES
18 permit, NPDES general permit.
19 HEARING OFFICER: It's admitted.
20 (Exhibit No. J-14 was admitted
21 into evidence.)
22 HEARING OFFICER: And excused from
23 the rule?

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1 MR. SASSER: Yes, sir.
2 HEARING OFFICER: Okay. There you
3 go.
4 THE WITNESS: Thank you for your
5 time.
6 HEARING OFFICER: You have the rest
7 of the day off.
8 THE WITNESS: Thank you.
9 MR. LUDDER: The Petitioners call
10 Daniel Wells.
11 (The Witness was duly sworn.)
12 HEARING OFFICER: Speak up for us.
13 THE WITNESS: Yes, sir.
14 DIRECT EXAMINATION
15 BY MR. LUDDER:
16 Q. Please state your name.
17 A. Ralph Daniel Wells.
18 Q. Mr. Wells, you have been in the
19 hearing room, I think, for the entire
20 proceedings; is that right?
21 A. I have.
22 Q. You have heard all the testimony
23 so far, correct?

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1 A. Correct.
2 Q. What is your -- or where are you
3 employed?
4 A. I'm employed at CDG Engineers &
5 Associates in Andalusia, Alabama.
6 Q. And in what capacity?
7 A. I'm a registered professional
8 engineer acting as a project manager and branch
9 manager.
10 Q. Okay. And did you work on the
11 Dothan landfill permit application?
12 A. I did.
13 Q. And did you -- were you the senior
14 project manager on that?
15 A. Yes, sir. I'm the engineer of
16 record for CDG on the project.
17 Q. Okay. And you put your seal on
18 the application --
19 A. I did.
20 Q. -- materials?
21 A. I did.
22 Q. Okay. Did anybody else in your
23 organization work on the application?

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1 A. Yes.
2 Q. Who would that be?
3 A. Sarah Sightler, project engineer.
4 Q. Okay. Is that pretty much it?
5 A. No. We had a large team. Joe
6 Adams, who's also an engineer, and,
7 additionally, we had surveyors and
8 subconsultants working on the project.
9 Q. Were you also associated with
10 preparing the Notice of Intent, referred to as
11 an NOI, for an NPDES permit from the Department?
12 A. Yes.
13 Q. And if you would, look at Exhibit
14 J-14.
15 A. There it is right there.
16 Q. And if you would, turn to the NOI,
17 which is attached to the permit itself. If you
18 would, go to the last page of that NOI and tell
19 us if you signed that document.
20 A. My name is printed on the
21 document, including the firm, CDG Engineers.
22 Q. Okay. And what's the
23 representation made about what you did with

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1 regard to that permit?

2 A. The NOI is prepared by a

3 consultant, or someone other than an employee of

4 the facility.

5 Q. And it indicates that you were the

6 one that did that --

7 A. It does.

8 Q. -- that you prepared it, correct?

9 A. Correct.

10 Q. Okay. Are you familiar with the

11 coordinates that are described in the NOI --

12 A. I am.

13 Q. -- for discharge points? And

14 what do those represent?

15 A. They represent a combination of

16 existing outfalls as well as outfalls that were

17 incorporated into the facility as part of the

18 solid waste permit.

19 Q. Okay. Are those outfalls from

20 sedimentation ponds?

21 A. There are outfalls from

22 sedimentation ponds in these coordinates, as

23 well the vehicle wash area outfall.

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1 Q. Vehicle wash? Okay. Are any of

2 those outfalls for the discharge of fill

3 material into wetlands?

4 A. No.

5 Q. Are any of those outfalls for the

6 discharge of fill material into streams?

7 A. No.

8 Q. And let's look at Exhibit P-5,

9 which is the Base Grading Plan, Sheet Number 3.

10 And you see sedimentation ponds on there,

11 correct?

12 A. Yes.

13 Q. And there are three, correct?

14 A. There are.

15 Q. Let's switch this around. Now, do

16 those sedimentation ponds collect stormwater

17 off the landfill?

18 A. They do.

19 Q. And they -- what's the concept

20 behind collecting stormwater off the landfill?

21 A. The ponds are designed as a

22 retention structure to allow sediment deposition

23 in the pond prior to outfall, so that we have

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1 minimized sedimentation into -- into the outfall

2 and into a receiving stream.

3 Q. All right. So the theory, I

4 guess, is that any stormwater that falls on the

5 landfill will flow into the sedimentation pond?

6 A. Yes. The runoff from the

7 landfill -- the ponds are not designed to handle

8 run-on water, which is differentiated by offsite

9 lands, flowing into the facility. They're

10 not -- they're not designed to capture that

11 run-on water.

12 Q. Okay. Now, on this Sheet Number 3

13 is also shown several places called "overflow

14 spillways." Do you see those?

15 A. I do.

16 Q. Are those close to, or are they

17 the discharge points that you listed in the

18 Notice of Intent?

19 A. They are close to -- the

20 discharges listed in the Notice of Intent are

21 tied to the outlet structure, rather than the

22 overflow spillway.

23 Q. Okay. Can you identify where

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1 those outlet structures are?

2 A. I can. They're identified on this

3 sheet as, Pond Outlet Structure, with a pipe

4 leading, specific information related to the

5 design at each stormwater outlet structure.

6 Q. Okay.

7 A. There's -- there's an existing

8 NPDES overflow outfall here that we left in the

9 NOI.

10 Q. Okay. All right. Were you

11 involved in developing the list of adjoining

12 property owners that's in Exhibit J-3, Part I?

13 A. Do you have a tab?

14 Q. I have a -- it may be tabbed.

15 What is it, Appendix 4.1? Were you involved in

16 preparing that list?

17 A. Yes. I believe this is the list

18 that was prepared at the time of permit

19 application --

20 Q. Okay.

21 A. -- developed from Houston County

22 GIS website.

23 Q. Do you have an explanation for why

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1 Michael Del Vecchio was not included on that
2 list?
3 A. Like I said just now, this list is
4 developed from the Houston County parcel
5 information, available on their website, and we
6 pulled adjoining property owners from that.
7 Q. And you didn't see Michael Del
8 Vecchio's property as an adjoining property?
9 A. If he's not on this list, we did
10 not see it as an adjoining property.
11 Q. Did you -- do you recall -- well,
12 you say "we." Was it you or somebody else?
13 A. It's under my direction, so it's
14 me.
15 Q. Okay. Did you verify that Michael
16 Del Vecchio -- that his property was not
17 adjoining the landfill?
18 A. I believe, from Del Vecchio's
19 testimony, he shared a property corner, and so
20 we have not verified that that pin is shared.
21 MR. LUDDER: Okay, okay. No
22 further questions.
23 HEARING OFFICER: Cross?

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1 MR. CARTER: No questions.
2 HEARING OFFICER: Mr. White?
3 CROSS-EXAMINATION
4 BY MR. WHITE:
5 Q. If you would, please, Mr. Wells,
6 could you give the Hearing Officer the benefit
7 of your experience as in the design of solid
8 waste municipal landfills?
9 A. Yes, sir. I've got about
10 approximately 13 years' experience designing
11 landfills in the state of Alabama. Our company,
12 and under my direction, we consult on
13 approximately 15 municipal solid waste
14 facilities in Alabama in addition to another
15 probably 30 to 40 C&D and industrial facilities.
16 In that -- in that experience, after obtaining
17 professional licensure, I've acted as a project
18 manager and registered professional engineer on
19 various permit modifications, greenfield
20 permitting, and other administrative actions,
21 including variances and coordination efforts
22 with the Department.
23 Q. Can you give us the benefit -- I

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1 mean, the rundown on your experience -- I mean,
2 your education, please?
3 A. Yes. I obtained a Bachelor of
4 Civil Engineering from the University of Alabama
5 in 2000, December of 2000. Also, I've done
6 various continuing education. I'm a member of
7 Solid Waste Association's technical groups, as
8 well as various industry organizations to
9 continue -- you know, to have continuous
10 education on landfill design, permitting, and
11 operation.
12 MR. WHITE: We offer Mr. Wells as
13 an expert.
14 HEARING OFFICER: All right.
15 MR. LUDDER: No objection.
16 MR. CARTER: No objection.
17 BY MR. WHITE:
18 Q. I want to fix something in here,
19 or at least clear something up. Would you look
20 at P-5 here a minute? Take a look at that and
21 see -- first of all, tell us what that is, or
22 what it purports to be.
23 A. All right. It's titled, Major

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1 Modification Plans for the Dothan Landfill for
2 the City of Dothan, December, 2014.
3 It has my signature and date of January the
4 9th of 2015.
5 Q. Okay. Can you run through the
6 different pages that you have in front of you,
7 just, the numbered pages?
8 A. I can. Sheet 1 is the title
9 page -- excuse me, cover page. There's a
10 Boundary Sketch, which is in color, been
11 referred to throughout the testimony. Sheet 2
12 is a site layout in this drawing where you
13 identified northern and eastern coordinates for
14 disposal cells and other pertinent facility
15 infrastructure. Sheet 3 is the Base Grading
16 Plan. This is the bottom line, or design of the
17 upgraded -- or the expanded MSW area, Cells L-6
18 through L-8. Sheet 4 is Leachate Management
19 Plan of those same cells, L-6 through L-8,
20 including proposed discharge to the City's
21 sanitary sewer collection system. Sheet 5 is a
22 Final Grading Plan. It has both the MSW
23 proposed expansion and the C&D. Sheet 6 is a

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1 Monitoring Plan. It shows -- at the point of
2 this plan, it shows existing NPDES outfall
3 locations. It also shows indicated future NPDES
4 outfall locations that we further permitted in
5 the NOI. It also shows explosive gas monitoring
6 points of both existing and proposed. In
7 addition, it shows groundwater monitoring
8 points, both existing and proposed.
9 Q. And Sheet 7?
10 A. Moving further, there's -- it
11 looks like something's cut off there, Mr. White.
12 I am anticipating that is Sheet 7.
13 Q. Okay.
14 A. It's cross sections of the
15 facility, as required by ADEM.
16 Q. Would you mark that then, if
17 that's what that is?
18 HEARING OFFICER: Well, check the
19 next one before you do that.
20 MR. WHITE: Yeah, good idea, thank
21 you.
22 THE WITNESS: Beginning on the next
23 one, there's a -- it looks like a

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1 Sheet 8, which is beginning with
2 details, and those -- although --
3 although it's cut off, I believe they
4 go 8 through 8E.
5 HEARING OFFICER: Okay. You can
6 mark it now.
7 THE WITNESS: With an initial?
8 MR. LUDDER: Thank you.
9 THE WITNESS: Yes, sir.
10 I believe, Mr. White, Sheets 8 are
11 details relevant to the design
12 submitted as part of the plan set.
13 BY MR. WHITE:
14 Q. Okay. Was it submitted as part of
15 the application for the permit modification?
16 A. Yes, sir.
17 Q. Okay. Can you take us through,
18 please, the -- well, let me withdraw
19 that and say: Is this a process whereby
20 different agencies are involved for approval
21 other than ADEM? Other agencies?
22 A. Yes. If you -- as you read the
23 location and siting standards that we referenced

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1 in the Division 13 rules, there are a number of
2 studies and corresponding letters of concurrence
3 that are related to the siting. An example is
4 the wetlands and waters of the State report,
5 done by TTL, including our request for
6 concurrence to the Corps of Engineers. And
7 there, you see a preliminary -- preliminary
8 jurisdictional determination, JD.
9 Q. Okay. Let me stop you there. You
10 have a response from the Corps that they do have
11 jurisdiction over this application, or this
12 proposal; is that correct?
13 MR. LUDDER: I object, Your Honor.
14 This is beyond the scope of direct.
15 Direct was limited to the NPDES permit
16 application.
17 HEARING OFFICER: Overruled.
18 A. As it relates to siting standards,
19 we prepare the report, submit it for a
20 concurrence request. In that concurrence
21 request, the Corps formalizes their
22 jurisdictional determination, in essence,
23 agreeing with or requiring revisions to TTL's

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1 report, ultimately leading to the Corps'
2 acceptance of -- in this case -- our
3 consultant -- our subconsultant, TTL's Wetlands
4 and Waters of the U.S. Delineation Report.
5 Q. Okay. So there was a
6 determination by one of your subcontractors --
7 A. Yes.
8 Q. -- that there were wetlands, and
9 that a 404 Corps permit was required?
10 MR. LUDDER: I object, Your Honor.
11 This is leading questioning under
12 supposed cross-examination.
13 Q. Was there?
14 MR. LUDDER: This is -- this --
15 we're entitled to manage our case
16 in chief the way we want to. We
17 limited the questions to -- to the
18 NPDES permit, and we have witnesses
19 beyond him that we'd like to get to.
20 HEARING OFFICER: We'll get there.
21 Overruled.
22 THE WITNESS: Can you restate the
23 question?

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1 BY MR. WHITE:
2 Q. What I'm -- you said that there
3 are other agencies. Can you tell us other
4 agencies that reviewed this potential --
5 A. Yes. Also in the siting standard,
6 there is a requirement for no adverse effect to
7 threatened and endangered species. In that,
8 we --
9 Q. Was there any affected species?
10 A. No.
11 Q. All right. Who made that
12 determination?
13 A. U.S. Fish and Wildlife.
14 Q. Okay. What other agency?
15 A. We -- a culture resource survey,
16 Alabama State Historical -- Historic [verbatim]
17 Commission.
18 Q. And the impact determination?
19 A. No -- there was an impact
20 determination. There is no impact.
21 Q. Okay. Who else?
22 A. We review flood plains. If we're
23 impacting flood plains, then we would submit a

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1 request to FEMA on those -- on those grounds.
2 There was no impact.
3 Q. Anyone else?
4 A. Let me make sure I got them all.
5 Threatened and endangered, cultural resource,
6 flood plains, wetlands. I think that's all, but
7 I can refer to rule --
8 Q. All right. Would you explain
9 here -- did you say you made a request for
10 concurrence?
11 A. Yes.
12 Q. Okay. Would you explain that?
13 A. In the request for concurrence, we
14 are submitting our -- our report and findings to
15 the Corps for their concurrence with that
16 report. In that, you -- part of the request is
17 a preliminary JD. In that -- and I believe --
18 Q. JD?
19 A. Jurisdictional Determination.
20 It's a Corps form that -- that's been
21 referenced, really, throughout the testimony.
22 Q. Would you explain any permitting
23 for planned impact?

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1 A. Yes. It -- specifically to
2 wetlands and streams, that preliminary JD made
3 some revisions to TTL's report and incorporated
4 jurisdictional wetlands and streams. And from
5 that, we -- we moved forward into a 404
6 permitting situation where we identified
7 proposed impact to those -- those bodies, and
8 request through -- again, through our
9 subconsultant, TTL, we began the permitting
10 process that included joint -- it's a permit
11 from the Corps, it's a certification from ADEM,
12 and a joint application process began on those.
13 Q. Would you explain the joint
14 application?
15 A. Well, I can explain it in
16 generalities. For more detail, I'd refer to
17 TTL. But, generally, we -- we put together an
18 application of a proposed impact and a
19 justification behind that. In this instance, it
20 is the 20.6-acre MSW expansion. In that
21 application, we identify the impact, why it's
22 needed, and a benefit to the public.
23 Q. Okay. Could you turn to

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1 Plaintiff's Exhibit 4?
2 A. P-4?
3 Q. Yeah, there you go. Would you
4 identify that again, please?
5 A. This appears to be a figure out of
6 TTL's permit application of the proposed impact
7 that would have been submitted as part of the
8 404 permitting process.
9 Q. Can you explain the various study
10 areas and maps that pertain?
11 A. I can. Earlier, in TTL's initial
12 assessment, we, CDG, identified a 100-acre area
13 to study for wetlands and streams. From that,
14 they identified wetlands and streams in their
15 report, and we continued to further define the
16 project area. In this map, the project area is
17 confined to the area where our proposed impact
18 occurs, so there's a red line showing "Project
19 area." It is approximately 40 acres, but it
20 is a -- it is a smaller study area within the
21 larger facility footprint.
22 Q. Okay. So the facility and the
23 impact are two different maps?

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1 A. They are.
2 Q. Two different areas? Did you have
3 to demonstrate any of your compliance with Corps
4 regulations to ADEM?
5 A. I believe, through the 401 Water
6 Quality Certification request that came from the
7 Corps, ADEM reviewed and issued a Water Quality
8 Certification with special conditions. Those
9 conditions include construction, Best Management
10 Practices, that we are required to maintain
11 during the permitted fill activity, and in that,
12 protect areas that are not impacted -- or not
13 approved for impact.
14 Q. Did that include incorporation of
15 compliance with state regulation?
16 A. I believe it does.
17 Q. Okay. And is that -- all of that
18 incorporated into your design?
19 A. It is.
20 Q. Okay. And if you would, please,
21 explain to the Hearing Officer what you
22 submitted to ADEM in support of the application
23 for this modified permit.

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1 A. Our original submittal to ADEM
2 included the permit plans, as well as two
3 binders of operations manual. One of those was
4 general conditions associated with various
5 activities of the landfill. One volume was
6 static stability analysis for the MSW area
7 to -- to document and verify three-to-one final
8 slope conditions, among other things.
9 Q. Does that application include any
10 request for alternate daily cover?
11 A. It does not.
12 Q. Why not?
13 A. We didn't request it.
14 Q. Okay.
15 A. Let me expand. We asked the City
16 if they had plans to incorporate alternate daily
17 covers into their operations, and they said no,
18 so we did not include that request.
19 Q. Does the application make any
20 mention of any possible future requests for
21 that?
22 A. There are sections within the
23 application that point to allowable alternate

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1 daily covers, and it says further that should
2 the facility request those, they need to do so
3 in writing to ADEM prior to approval.
4 Q. Has that been done?
5 A. It has not.
6 Q. Okay. Do you know if that
7 landfill is currently -- the operating landfill,
8 the original 35-06, is that accepting waste now?
9 A. It is active.
10 Q. Okay. If you could tell us, why
11 are there -- well, does your application include
12 a request for separate disposal areas?
13 A. It does.
14 Q. Why?
15 A. Well, there are numerous reasons
16 to do that. First and foremost, their MSW is a
17 very complex lined -- composite-lined facility;
18 in that, there are certain protections that we
19 take to make sure we don't have impacts to
20 liner. To that end, C&D is a very bulky
21 material. It does not compact well. In our
22 experience, it can lead to various operational
23 problems within the MSW footprint. So from that

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1 perspective, we asked -- or we recommended to
2 the City that they permit separate disposal
3 areas really because of the waste type, the
4 ability to compact, the nonleachable
5 characteristics of construction and demolition
6 waste, and other operational considerations that
7 are really -- really differentiate municipal
8 solid waste and construction and demolition
9 waste.
10 Q. Could you tell us a little bit
11 more about the difference in leachability
12 between those two?
13 A. I can. "Leachability" is a term
14 related to -- if water -- stormwater or
15 rainwater were to im -- were to come in contact
16 with the waste, organic waste is leachable.
17 Some industrial waste also, meaning that
18 contaminants of concern can be picked up in that
19 water. C&D, by nature, is non-leachable. It's
20 concrete and bricks and untreated lumber, those
21 type things. So it -- what it points to,
22 Mr. White, is that if -- if put in contact
23 with -- with water, then will it pick up

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1 contaminants? And, generally, C&D does not.
2 Q. Can you give us the benefit of a
3 description or an outline of your requirements
4 included in your application to ADEM for liner
5 systems?
6 A. The requirements for liner systems
7 are really -- you know, it's throughout the
8 plans that it applies to -- for composite-lined
9 system -- that applies to the MSW section.
10 Q. What is the purpose of that, to
11 start with?
12 A. Composite liners are required so
13 that you don't have leachate moving through the
14 waste mass into underlying groundwater. So it's
15 a protective feature of MSW, so that you don't
16 have an impact to groundwater. In this
17 instance, it serves as an impermeable barrier
18 where any leachate that is produced, we collect
19 and dispose of at a city treatment facility. So
20 we're -- the composite-lined system is
21 protective of groundwater, is the best way I can
22 say it. We collect all of the leachate
23 generated in MSW.

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1 Q. And does that comport with
2 protection of the public health?
3 A. Yes.
4 Q. And does that correspond and
5 comply with all regulations?
6 A. It does.
7 MR. LUDDER: Your Honor, I object.
8 Number one, that calls for an opinion
9 that embraces an ultimate issue of law
10 that the Commission is to decide, not
11 this Witness. And, secondly, we're
12 getting into areas that are unrelated
13 to the issues that have been raised in
14 the request for hearing. Composite
15 liner has nothing to do with our
16 request. Leachate has nothing to do
17 with our request. We could be here
18 all day talking about engineering of
19 this landfill. None of it has
20 relevance.
21 HEARING OFFICER: Overruled. I
22 think you already answered that
23 question.

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1 BY MR. WHITE:
2 Q. And does that also comport with
3 regulations for the protection of the
4 environment?
5 A. Yes.
6 Q. Okay. How many sites are you
7 aware of with such a design?
8 A. It's -- it's a regulatory -- it's
9 a regulation in Division 13, so all municipal
10 solid waste landfills are required to have a
11 composite-lined system in Alabama.
12 Q. Okay. Can you design -- can you
13 explain what your application calls for in the
14 way of design slope?
15 A. To clarify, are you referring to
16 final cover slope?
17 Q. Yes -- well, what's your
18 design -- what is your design called? I mean,
19 your application -- the City's application, as
20 reflected in your design?
21 A. Our design in the City's
22 application refers to a four-to-one final on the
23 construction and demolition disposal area, and

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1 the existing and the active MSW cells. It
2 proposes for a three-to-one final on the
3 expanded 20.6-acre MSW area for final cover.
4 Q. Okay. Why is that?
5 A. Well, there are several reasons.
6 One of the predominate ones -- and without going
7 into all -- for the municipal solid waste area,
8 to build an effective four-to-one operating
9 slope, and come back with final cover, our
10 design incorporates a three to one with a bench
11 terrace, so that we create some additional
12 stability in the cover. That terrace serves a
13 number of features. One is stability, one is
14 erosion and sediment control, and transport.
15 And so in order to accomplish that bench
16 terrace, we have to apply for a three to one,
17 and the static stability analysis addresses that
18 three to one among a few of the modules
19 presented.
20 Q. Okay. And the stability analysis,
21 is that what it's called?
22 A. Static stability analysis.
23 Q. Thank you. You touched on the

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1 stormwater control systems a little bit. If you
2 would, please, explain that in context, what
3 your application calls for, and how the NPDES
4 relates to it.
5 A. Well, our -- our application calls
6 for a three-to-one slope with terraces no
7 greater than 20 feet in elevation. So
8 effectively, that's a 60-foot run of stormwater
9 between terraces. In our design, we evaluate
10 that length to make sure we maintain the area in
11 what's considered an overland flow stormwater
12 configuration. We do that so that we minimize
13 erosion, potential ones -- on the cap. From
14 there, it travels along that, you know -- that
15 final cover slope to a terrace where those
16 terraces are reinforced with various erosion
17 control mechanisms to make sure that we're not
18 eroding the terraces. Ultimately, it transfers
19 contact stormwater to a sediment pond, where
20 any -- any sediment that is picked up is
21 deposited prior to discharge.
22 Q. Have you ever designed any other
23 landfills with three-to-one final covers?

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1 A. We have.
2 Q. Okay. And did you incorporate
3 that design into your application?
4 A. Yes.
5 Q. Okay. And did ADEM grant those
6 applications?
7 A. Yes.
8 Q. Okay. And was the information
9 supplied with your application sufficient for
10 them to make a determination that you were
11 seeking a variance from the regulation requiring
12 a four-to-one slope?
13 MR. LUDDER: Objection. He's
14 asking for what ADEM thought.
15 MR. WHITE: No, I'm asking was it
16 sufficient? He's already testified
17 he's done it many times, and I'm just
18 asking if he did it again sufficient
19 for them to make the same
20 determination.
21 HEARING OFFICER: Overruled.
22 THE WITNESS: Yes.
23 BY MR. WHITE:

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1 Q. Have you ever done any other
2 landfills with two working faces?
3 A. Yes.
4 Q. Okay. Same question: Did you
5 submit sufficient information for the Department
6 to determine whether or not the regulations were
7 complied with for those multiple faces?
8 A. Yes.
9 MR. WHITE: Okay. No further
10 questions.
11 HEARING OFFICER: Redirect?
12 REDIRECT EXAMINATION
13 BY MR. LUDDER:
14 Q. Mr. Wells, you testified that a
15 three-to-one slope would minimize erosion; is
16 that right?
17 A. I did.
18 Q. Would a four-to-one slope more
19 minimize erosion?
20 A. There are other -- other things
21 that come into play between a strict four to one
22 and three to one. Can you specify length,
23 contact water, how long that water was

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1 contacted?
2 Q. Well, I mean, can you -- can you
3 assume that those things remain the same in a
4 three-to-one design and a four-to-one design?
5 A. I can speak to this design, and in
6 this design, they are equally protective.
7 Q. You believe they're equally
8 protective?
9 A. I do.
10 Q. Okay. Would water runoff velocity
11 be higher in a three-to-one slope?
12 A. Depending on length, it will.
13 Q. And in this case?
14 A. No, it wouldn't.
15 Q. No? Okay. You referred to the
16 401 Water Quality Certification. Do you know if
17 that is considered by ADEM to be a permit?
18 A. I do not know.
19 Q. Do you know if that is -- if that
20 addresses -- I withdraw the question.
21 Are you aware of any ADEM permit for the
22 discharge of fill material into wetlands?
23 A. I am not aware.

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1 Q. Are you aware of any ADEM permit
2 for discharge of fill material into streams?
3 A. I am not aware.
4 Q. So the only permit that addresses
5 discharges -- discharges of fill material into
6 wetlands and streams is the Corps of Engineers'
7 permit, correct?
8 A. That is correct. I believe it
9 incorporates the conditions of the 401 Water
10 Quality Certification into this permit.
11 Q. Okay. But you don't -- you just
12 testified, I believe, that the 401 Water Quality
13 Certification was not a permit?
14 A. It is not. Certification with
15 special conditions, is my understanding.
16 MR. LUDDER: Okay. No further
17 questions.
18 HEARING OFFICER: Mr. Carter?
19 CROSS-EXAMINATION
20 BY MR. CARTER:
21 Q. Mr. Wells, just briefly. You just
22 mentioned the 401 Water Quality Certification.
23 You said it's not a permit, it's a

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1 certification. Was -- do you know if -- since
2 you've been the project engineer, was that
3 challenged in any way?
4 A. I'm not aware.
5 Q. Was the Corps permit challenged in
6 any way?
7 A. I'm not aware. I don't believe it
8 was, no.
9 MR. CARTER: No further questions.
10 HEARING OFFICER: Mr. White?
11 MR. WHITE: No, sir.
12 HEARING OFFICER: May this -- well,
13 I don't know whether you're excused or
14 not.
15 MR. WHITE: No, sir.
16 HEARING OFFICER: Thank you, sir.
17 I don't know how long we've been
18 going. How you doing?
19 MR. LUDDER: Okay.
20 HEARING OFFICER: Anybody need a
21 break? You all right?
22 MR. WHITE: Please, sir.
23 HEARING OFFICER: Okay. Ten

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1 minutes.
2 (A brief recess was taken.)
3 HEARING OFFICER: All right. We
4 are back on the record. Call your
5 next Witness, Mr. Ludder.
6 MR. LUDDER: Anthony Scott Hughes.
7 HEARING OFFICER: All right.
8 Mr. Hughes, our court reporter will
9 swear you in.
10 (The Witness was duly sworn.)
11 DIRECT EXAMINATION
12 BY MR. LUDDER:
13 Q. Mr. Hughes, would you state your
14 full name?
15 A. Anthony Scott Hughes.
16 Q. Thank you. Where are you
17 employed?
18 A. I am employed with the Alabama
19 Department of Environmental Management. I am
20 the Chief of the Field Operations Division.
21 Q. And how many years have you been
22 employed with the Department?
23 A. I've been with the Department

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1 since August of '89, so going close to 27 years.
2 Q. Okay. Pretty close. How long
3 have you been Chief of the Field Operations
4 Division?
5 A. I've been -- entered that position
6 November of '14.
7 Q. 2014?
8 A. So about a year and a half.
9 Q. Okay. And where were you before
10 that?
11 A. I was the -- over the Office of
12 External Affairs, where I served in two roles:
13 One, I served as the spokesperson for the
14 Department, and also was over the Section 319
15 Nonpoint Source Program.
16 Q. And was there anything before
17 that?
18 A. Before that, I was in the Air
19 Division, where I managed a petroleum section;
20 and prior to that, I was with the Water
21 Division, where I started my career.
22 Q. And what did you do in the Water
23 Division at that time?

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1 A. I worked in the Under -- began as
2 an environmental scientist in the Underground
3 Storage Tank Program. I eventually moved up to
4 manage that program prior to moving over to the
5 Air Division.
6 Q. Okay. Could you tell us what a
7 Water Quality Certification is?
8 A. A Water Quality Certification is a
9 certification that we provide to the Corps of
10 Engineers as part of their 404 permitting
11 process.
12 Q. And what is the 404 permitting
13 process? Or what does 404 relate to?
14 A. 404 is a permitting process that
15 the Corps of Engineers implements that deals
16 with the filling in of wetland
17 material -- wetlands, and as well as dredging.
18 Q. Does it also address filling of
19 streams?
20 A. It does address filling of streams
21 as well.
22 Q. And dredging of streams?
23 A. Right.

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1 Q. And the Corps of Engineers, are
2 they responsible for issuing a permit to
3 authorize filling or dredging of wetlands or
4 streams?
5 A. I believe that is correct, but
6 I -- again, that's probably something that would
7 need to be directed to the Corps of Engineers,
8 as far as what their specific activities are.
9 Q. Okay. When you -- how does the
10 process work to -- to obtain Department Water
11 Quality Certification?
12 A. A joint permit application is
13 submitted by the applicant.
14 Q. "Joint," meaning what?
15 A. It is to the -- our Department as
16 well as to the Corps of Engineers.
17 Q. A permit application?
18 A. Correct.
19 Q. So the Department and the City of
20 Dothan, in this case, submit a permit
21 application to the Corps?
22 A. The Department does not. The
23 applicant submits what is called a joint

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1 application to the Corps, as well as to the
2 Department.
3 Q. Okay, okay. And is it an
4 application to the Department for a permit, or
5 for a Water Quality Certification?
6 A. It is a joint permit application
7 for the 404 permit, of which the Department
8 provides the 401 certification process for that
9 permit.
10 Q. All right. So the
11 application -- the joint application is an
12 application for a 404 permit from the Corps, and
13 an application for a Water Quality Certification
14 under 401 --
15 A. That would be correct.
16 Q. -- to the Department, correct?
17 A. Correct.
18 Q. Okay. So that's how the process
19 begins? What happens after that?
20 A. At that point in time, the Corps
21 goes through a process of evaluating -- doing
22 their evaluation. Ultimately, they get to a
23 public notice, where they implement a public

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1 notice, go through a public comment period,
2 allow interested parties to submit comments on
3 the proposed activity. Once that process is
4 complete, they submit to the Department a
5 request for certification. Upon receiving that
6 request from the Corps for certification, we go
7 through our review process, and determine
8 whether or not certification can be issued, and
9 ultimately, issue a 401 Water Quality
10 Certification.
11 Q. And what happens -- is that the
12 end of the process?
13 A. From our standpoint, that's the
14 end of the process.
15 Q. Okay. Now, does the Department
16 have any rules that address how the Department
17 is to manage or issue Water Quality
18 Certifications?
19 A. We do not have specific 401
20 Water Quality safe -- Water Quality
21 Certification rules.
22 Q. Okay. So you do it based on what?
23 A. Based on the statute from Section

<p style="text-align: right;">Page 572</p> <p>1 401 of the Clean Water Act.</p> <p>2 Q. Okay. Now, is a -- is a Water</p> <p>3 Quality Certification considered to be a</p> <p>4 permit -- considered to be an NPDES permit from</p> <p>5 the Department?</p> <p>6 A. It is not. It is a certification.</p> <p>7 Q. Is a Water Quality Certification</p> <p>8 considered to be a permit under the Alabama</p> <p>9 Water Pollution Control Act?</p> <p>10 A. It is not.</p> <p>11 Q. Now, you mentioned a joint public</p> <p>12 notice. Did ADEM and the Corps of Engineers</p> <p>13 issue a joint public notice for the proposed</p> <p>14 discharge of fill material into waters of the</p> <p>15 United States associated with the proposed</p> <p>16 Dothan landfill expansion?</p> <p>17 A. Yes. A -- a joint public notice</p> <p>18 was issued for that process.</p> <p>19 Q. All right. Let me show you</p> <p>20 Exhibit J-9. Is that the notice that you're</p> <p>21 referring to?</p> <p>22 A. This does look like the joint</p> <p>23 public notice that was issued for this project.</p>	<p style="text-align: right;">Page 574</p> <p>1 from the Corps of Engineers for Water Quality</p> <p>2 Certification.</p> <p>3 Q. All right. And then what happened</p> <p>4 following that request?</p> <p>5 A. Following that request, we did a</p> <p>6 review of the information that had been</p> <p>7 submitted to the Department, and we issued a 401</p> <p>8 Water Quality Certification for the project.</p> <p>9 Q. Okay. Let me show you what has</p> <p>10 been marked as Exhibit P-2 for identification.</p> <p>11 HEARING OFFICER: Is that 2, David?</p> <p>12 MR. LUDDER: P-2.</p> <p>13 BY MR. LUDDER:</p> <p>14 Q. Does that appear to be the Water</p> <p>15 Quality Certification for this Dothan landfill</p> <p>16 project -- or excuse me -- for the Corps of</p> <p>17 Engineers' permit?</p> <p>18 A. Yes, it does appear to be the</p> <p>19 Water Quality Certification that was issued by</p> <p>20 the Department.</p> <p>21 Q. Does it appear to be complete?</p> <p>22 A. It does appear to be complete.</p> <p>23 Q. All right. Does that Water</p>
<p style="text-align: right;">Page 573</p> <p>1 Q. Okay. Do you recall if Exhibit</p> <p>2 P-4 was part of that notice?</p> <p>3 A. I do not recall that specifically.</p> <p>4 Q. I'm sorry?</p> <p>5 A. But it does -- I'm sorry. I</p> <p>6 believe the map was a part of the public notice.</p> <p>7 Q. All right. There is a map</p> <p>8 attached to J-9, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And it's a black-and-white map,</p> <p>11 correct?</p> <p>12 A. That is correct.</p> <p>13 Q. And does P-4 appear to be the same</p> <p>14 map, but in color?</p> <p>15 A. It does appear to be the same map.</p> <p>16 Q. Okay. So -- all right. And so</p> <p>17 after that public notice, what did the</p> <p>18 Department do regarding the Water Quality</p> <p>19 Certification?</p> <p>20 A. Well, the Department -- the public</p> <p>21 notice was initiated by the Corps, and once the</p> <p>22 public notice -- once the public comment period</p> <p>23 was complete, the Department received a request</p>	<p style="text-align: right;">Page 575</p> <p>1 Quality Certification require the City to ensure</p> <p>2 compliance with applicable requirements of ADEM</p> <p>3 Administrative Code Chapter 335-6-6 National</p> <p>4 Pollutant Discharge Elimination System?</p> <p>5 A. It does reference that, as well as</p> <p>6 another chapter, Water Use Classifications.</p> <p>7 Q. Water Use Classifications, you</p> <p>8 said?</p> <p>9 A. Right. Chapter 335-6-11.</p> <p>10 Q. And does it also reference</p> <p>11 335-6-10, Water Quality Criteria?</p> <p>12 A. That is correct.</p> <p>13 Q. Okay. So this Water Quality</p> <p>14 Certification, does that impose a condition of</p> <p>15 the Corps of Engineers' permit that the</p> <p>16 Permittee must ensure compliance with those</p> <p>17 provisions?</p> <p>18 A. Yes.</p> <p>19 Q. Does the Water Quality</p> <p>20 Certification beget a condition of the Corps of</p> <p>21 Engineers' permit?</p> <p>22 A. I believe that is correct. These</p> <p>23 special conditions are incorporated into the</p>

<p style="text-align: right;">Page 576</p> <p>1 Corps permit.</p> <p>2 Q. Okay. And so this condition that</p> <p>3 we're looking at, I believe it's on Page</p> <p>4 1 -- and it's the paragraph numbered 1 -- it</p> <p>5 refers to several chapters of the Administrative</p> <p>6 Code. Those are now conditions of the permit,</p> <p>7 the Corps of Engineers' permit, correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Okay. Does the Water Quality</p> <p>10 Certification require the City of Dothan to</p> <p>11 comply with the Alabama Water Pollution Control</p> <p>12 Act?</p> <p>13 A. I am not sure about that.</p> <p>14 Q. All right. Let's look at</p> <p>15 the -- on Page 3, the second-to-last paragraph.</p> <p>16 Would you read that first sentence?</p> <p>17 A. -- that starts with, Issuance of a</p> <p>18 certification?</p> <p>19 Q. Yes.</p> <p>20 A. The issuance of a certification by</p> <p>21 ADEM neither precludes nor negates an</p> <p>22 operator/owner's responsibility or liability to</p> <p>23 apply for, obtain, or comply with other ADEM,</p>	<p style="text-align: right;">Page 578</p> <p>1 Q. Okay. Did you have any</p> <p>2 coordination with the Water Division regarding</p> <p>3 any permits that they might -- that they might</p> <p>4 be responsible for issuing?</p> <p>5 A. We did not.</p> <p>6 Q. Did you -- I withdraw the</p> <p>7 question.</p> <p>8 MR. LUDDER: No further questions.</p> <p>9 HEARING OFFICER: Cross?</p> <p>10 CROSS-EXAMINATION</p> <p>11 BY MR. CARTER:</p> <p>12 Q. Mr. Hughes, just briefly, let</p> <p>13 me -- now, you have one exhibit up</p> <p>14 there -- which is the Water Quality</p> <p>15 Certification -- already; is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. Now, you're head of the</p> <p>18 Field Operations Division. You require -- I</p> <p>19 mean, do y'all put records on eFile?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And now --</p> <p>22 MR. CARTER: I'm going to mark it</p> <p>23 as Number 3, Respondent's 3.</p>
<p style="text-align: right;">Page 577</p> <p>1 federal, state, or local government permits,</p> <p>2 certifications, licenses, or other approvals.</p> <p>3 Q. All right. Are you aware that the</p> <p>4 Alabama Water Pollution Control Act requires a</p> <p>5 permit for every discharge of pollutants to</p> <p>6 waters?</p> <p>7 A. I -- I am not.</p> <p>8 Q. Okay. And if you would, look</p> <p>9 at -- on Page 1, the paragraph numbered 2. And</p> <p>10 read the first sentence there, beginning with,</p> <p>11 Please be advised.</p> <p>12 A. Please be advised that ADEM permit</p> <p>13 coverage may be required prior to commencing and</p> <p>14 and/or continuing certain activities/operations</p> <p>15 relating to or resulting from the project.</p> <p>16 Q. Okay. Was the extent of your</p> <p>17 involvement with the Dothan landfill project the</p> <p>18 issuance of this Water Quality Certification?</p> <p>19 A. That is correct.</p> <p>20 Q. You had no -- no coordination</p> <p>21 with, say, the Land Division, regarding the</p> <p>22 solid waste permit?</p> <p>23 A. We did not.</p>	<p style="text-align: right;">Page 579</p> <p>1 BY MR. CARTER:</p> <p>2 Q. Okay. If you would, take a look</p> <p>3 at Respondent's Exhibit Number 3 right there,</p> <p>4 and tell me what that is. You can open it up.</p> <p>5 I don't think I...</p> <p>6 A. Description: Section 401 Water</p> <p>7 Quality Certification.</p> <p>8 Q. Okay. And now the first part of</p> <p>9 it, is that the same as the exhibit I think that</p> <p>10 was previously marked and entered into evidence?</p> <p>11 That's the -- the 401 Water Quality</p> <p>12 Certification with Special Conditions; is that</p> <p>13 right?</p> <p>14 A. That is correct, and it does</p> <p>15 appear to be consistent.</p> <p>16 Q. Okay. And now, in that document</p> <p>17 I've provided with you, there is additional</p> <p>18 document -- documents attached to it or added</p> <p>19 onto that particular file. Can you identify</p> <p>20 those or tell the Hearing Officer what those are</p> <p>21 there for?</p> <p>22 A. This is a Department of Army</p> <p>23 application for the Dothan landfill expansion.</p>

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1 Q. Okay. So there's a couple hundred
2 pages of documents there. Would that be
3 basically, the file, I guess, for lack of a
4 better word, that Field Ops would have used in
5 evaluating the 401?
6 A. Yes. This -- this appears to be
7 the -- the file, as well as the enclosed public
8 notice from the Department of Army Corps of
9 Engineers.
10 Q. Okay. Now, in the process, are
11 you -- if you can answer the question, and you
12 may not know -- they asked about the joint
13 public notice. Do you know were there any
14 comments to the joint public notice?
15 A. I do not believe there were any
16 comments.
17 Q. Okay. Now, as for the
18 certification that's issued, is that an action
19 for the Department that would be a final action
20 and be appealable?
21 A. That is a final action by the
22 Department. It could be appealed.
23 Q. Okay. Did anybody ever appeal the

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1 Water Quality Certification -- 401 Water Quality
2 Certification?
3 A. There was no appeal to that 401
4 Water Quality Certification.
5 Q. Okay. And now also, you answered
6 a few questions in reference to "Special
7 Conditions." I think they're outlined on the
8 Water Quality Certification. Do you know, are
9 those -- did those become part of the Corps
10 permit?
11 A. Yes. Those are incorporated as
12 special conditions in the Corps permit.
13 Q. Okay. And now what
14 about -- okay. You were asked -- I think you
15 were asked a few minutes ago if there were other
16 regulations that applied to the 401 Water
17 Quality Certification as well. I think you read
18 those off, that those applied to the Clean Water
19 Act and some other things?
20 A. Yes.
21 Q. Okay. Are you aware or -- is
22 there an exemption that exists for an NPDES
23 permit coverage as it pertains to a 401 Water

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1 Quality -- or 401 -- excuse me, I'm sorry -- 401
2 Clean Water Act permit?
3 A. I am not aware of any -- any
4 exemption.
5 MR. CARTER: Okay. Nothing further
6 at this time.
7 HEARING OFFICER: Mr. White? What?
8 MR. LUDDER: He said, No, I
9 believe.
10 HEARING OFFICER: Okay.
11 MR. WHITE: No, sir.
12 REDIRECT EXAMINATION
13 BY MR. LUDDER:
14 Q. Mr. Hughes, do you know how the
15 Corps of Engineers provides public notice of
16 their dredge and fill permits?
17 A. I do not. That would be a
18 question that would have to be directed to the
19 Corps.
20 Q. All right. You don't have any
21 idea how they do it? Or where the notice is
22 circulated?
23 A. I do not.

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1 Q. Okay. Do you often get comments
2 on proposed Water Quality Certifications?
3 A. There are comments that are
4 submitted to the Corps, yes.
5 Q. All right. Does -- how often does
6 that occur?
7 A. Again, that's a -- that's a Corps
8 of Engineers' function that -- that -- when
9 comments are submitted, they are -- they go to
10 the Corps. We typically get copies, but I
11 cannot speculate or estimate on how often or
12 what percentage that is.
13 Q. Okay. If -- if comments are
14 received by the Corps that relate to the terms
15 of the Water Quality Certification, would the
16 Corps ask the Department to respond to those
17 comments?
18 A. Typically, the Corps requests the
19 applicant to respond to any comments and address
20 any issues that are brought up, and if those
21 issues are related to the 401 Water Quality
22 Certification, there could be
23 correspondence -- there could be communications

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1 between the Department and Corps on that issues.
2 Q. And do you have any idea how often
3 that occurs?
4 A. I do not.
5 MR. LUDDER: Okay. No further
6 questions.
7 HEARING OFFICER: Mr. Carter?
8 RECROSS EXAMINATION
9 BY MR. CARTER:
10 Q. If you would, please, this is
11 the -- the ADEM Water Quality -- Water Division
12 Water Quality Program, Chapter 335-6-6 NPDES
13 regulations. And if you would, read
14 335-6-6-.03. It's going to be -- (a), 3 (b).
15 MR. SASSER: Very good.
16 A. (a), 3, (b).
17 Q. Right. Well, if you would
18 start -- I guess, start with the first part and
19 then read.
20 A. Okay. Part 1, No person shall
21 discharge pollutants into waters of the State
22 without first having obtained a valid NPDES
23 permit or coverage under a valid General NPDES

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1 Permit unless such discharge is (a) Of sewage
2 from vessels, effluent from properly functioning
3 marine engines, laundry, shower, and galley sink
4 wastes, or any other discharge incidental to the
5 normal operation of a vessel. This exclusion
6 does not apply to...
7 And then it lists three issues. You want
8 me to read those three, or just go to (b)?
9 Q. You can read all three, to be
10 complete.
11 A. Okay.
12 Again, This exclusion does not apply to:
13 The discharge of any solid wastes, garbage,
14 ashes, rubbish, or hazardous waste within the
15 meaning of Code of Alabama (1975), 22-27-2 (1984
16 Rplc. Volume), any other pollutant, industrial
17 waste or any other waste within the meaning of
18 Code of Alabama (1975), 22-22-1(b) (1984 Rplc.
19 Volume), or any discharge in violation of rule
20 335-6-6-.02.
21 Part 2, Waste resulting from the improper
22 operation of vessel, or from the improper
23 storage or handling of a solid or liquid product

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1 on board a vessel; or...
2 Part 3, Any waste resulting from any
3 operations of a vessel in use for a purpose
4 other than a means of transportation.
5 And then Part 1(b), Of dredged or fill
6 material which is regulated under Section 404 of
7 the FWPCA.
8 Q. And that FWPCA would mean the --
9 A. Federal Water Pollution Control
10 Act.
11 MR. CARTER: Okay. Thank you.
12 That's all. That's all, Your Honor.
13 HEARING OFFICER: Mr. White?
14 MR. WHITE: Nothing further.
15 HEARING OFFICER: All right. May
16 this Witness be excused and excused
17 from the rule?
18 MR. LUDDER: Yes.
19 MR. SASSER: Yes.
20 HEARING OFFICER: Thank you, sir.
21 You're ready to go.
22 (A brief recess was taken.)
23 MR. CARTER: Your Honor, I think I

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1 asked everybody if it was okay, but I
2 move to admit P -- it would be
3 Respondent 3, which was the Water
4 Quality Certification.
5 HEARING OFFICER: You said 3?
6 MR. LUDDER: Your Honor, the
7 Petitioners would like to offer for
8 admission Exhibit P-2.
9 HEARING OFFICER: P-2?
10 MR. LUDDER: P-2.
11 HEARING OFFICER: Okay. It's
12 admitted.
13 (Exhibit No. P-2 was admitted
14 into evidence.)
15 HEARING OFFICER: And R-3?
16 MR. CARTER: Yes, sir. It would be
17 Respondents 3.
18 HEARING OFFICER: Okay.
19 MR. SASSER: And you got R-2?
20 HEARING OFFICER: I just had a
21 little mixed up. It's not already in?
22 Okay. And it's admitted.
23 MR. CARTER: And, Your Honor, R-2,

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1 if I neglected to do that earlier.
2 HEARING OFFICER: I'm not sure you
3 admitted R-2. What is R-2? Is it the
4 map?
5 MR. CARTER: That would be the
6 Corps permit [verbatim].
7 HEARING OFFICER: Okay. R-1, -2,
8 and -3 are admitted.
9 (Exhibits No. R-1 and R-2 were
10 previously admitted into
11 evidence.)
12 (Exhibit No. R-3 was admitted
13 into evidence.)
14 MR. CARTER: Thank you.
15 HEARING OFFICER: Call your next
16 Witness, Mr. Ludder.
17 MR. LUDDER: The Petitioners call
18 James McAfee.
19 HEARING OFFICER: Mr. McAfee, the
20 court reporter will swear you in. If
21 you'll raise your right hand.
22 (The Witness was duly sworn.)
23

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1 DIRECT EXAMINATION
2 BY MR. LUDDER:
3 Q. Would you please state your full
4 name?
5 A. James Robert McAfee.
6 Q. And where are you employed?
7 A. Alabama Department of
8 Environmental Management.
9 Q. How long have you been employed
10 there?
11 A. Just about 15 years.
12 Q. In what capacity have you been
13 employed?
14 A. Been in the Field Operations for
15 the previous 15, except for the last couple of
16 days, in the Air Division.
17 Q. Okay. While you were working in
18 the Field Operations Division, did you have
19 occasion to work on a Water Quality
20 Certification relating to the Dothan landfill?
21 A. Yes, sir.
22 Q. And what was your role in that
23 Water Quality Certification?

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1 A. I would do the initial review of
2 the joint public notice when it came out.
3 Q. And you're referring to a joint
4 public notice issued by who?
5 A. The U.S. Army Corps of Engineers.
6 Q. Okay. And go ahead and proceed,
7 please.
8 A. And we do the initial review from
9 the joint public notice from the Corps, and we
10 then do a fee letter and information request,
11 that would then be reviewed by Richard Hulcher,
12 my immediate supervisor.
13 Q. And what would that information
14 request be about?
15 A. Depending on the project, would be
16 the fee for the processing part of it, and then
17 any information that was needed for us to make
18 our determination at that time.
19 Q. Okay. And do you recall making
20 such an information request to the City of
21 Dothan in the -- regarding the Dothan landfill?
22 A. Yes, sir.
23 Q. And do you recall what kind of

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1 information you sought from the City?
2 A. Not right offhand.
3 Q. Okay. Is it -- do you know if the
4 Department has any kind of rules regarding the
5 issuance of Water Quality Certifications?
6 A. No, sir.
7 Q. You don't know, or there are no
8 rules? Do you know which?
9 A. You want to ask again?
10 Q. Yeah. Do you know if the
11 Department has rules regarding Water Quality
12 Certifications?
13 A. No, sir. There are no rules.
14 Q. Okay. Do you know if the Water
15 Quality Certification is considered to be a
16 permit under the National Pollutant Discharge
17 Elimination System?
18 A. No, sir. The 401 is under the
19 Clean Water Act -- Federal Clean Water Act
20 Section 401, hence the name.
21 Q. Okay. And is the Water Quality
22 Certification considered to be a permit by ADEM?
23 A. I do not know that. You would

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1 have to ask someone else.
2 Q. Okay. When you reviewed the joint
3 public notice and the information you got from
4 the City of Dothan, were you the one who drafted
5 the Water Quality Certification?
6 A. I would do the draft
7 certification, yes, sir.
8 Q. And when you completed that draft,
9 what would you do with it?
10 A. You [verbatim] would take the
11 certification and all the information to my
12 immediate supervisor, Richard Hulcher, for his
13 review.
14 Q. Okay. And who would actually
15 issue the Water Quality Certification?
16 A. The certification is signed by
17 Mr. Scott Hughes.
18 Q. All right. And in this case, he
19 signed the certification for the Dothan
20 landfill, correct?
21 A. Yes, sir.
22 Q. And you just referred to Exhibit
23 P-2; is that right?

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1 A. That's correct.
2 Q. Okay. Does the -- do you recall
3 if Richard Hulcher asked you to revise any
4 conditions in the Water Quality Certification?
5 A. I can't recollect him asking --
6 Q. You can't recollect?
7 A. -- to revise anything.
8 Q. I'm sorry?
9 A. I can't recollect him -- to revise
10 anything or asking for a revision.
11 Q. Okay. So you think it was
12 approved as you had drafted it?
13 A. I believe so.
14 Q. Does the Water Quality
15 Certification that you drafted require the City
16 of Dothan to comply with the Alabama Water
17 Pollution Control Act?
18 A. I believe it does, but I'd have to
19 read it to be sure.
20 Q. Could you look at it and see if
21 you can find any reference to that?
22 A. I don't see it referenced in here
23 that I can find at this time.

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1 Q. Okay. And are the -- is the
2 condition on Page 1 of the paragraph that has
3 the number one next to it, is that a condition
4 that's included in all Water Quality
5 Certifications?
6 A. I don't know if it's included in
7 all of them or not, but it's one of the main
8 ones that we normally use. But I can't tell you
9 that it's going to be in every single one.
10 Q. All right. And would your answer
11 be the same with regard to the paragraph that
12 has the number two next to it?
13 A. Yes, sir, being that I don't see
14 all the certifications we do, I wouldn't be able
15 to tell you what's in all of them.
16 Q. Right. But you would expect it to
17 be in all of them?
18 A. Like I said, it's one of the main
19 paragraphs, so...
20 Q. It's part of a template, isn't it?
21 A. We have certain conditions that we
22 have to look at, normally.
23 Q. And the second-to-last paragraph

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1 on Page 3, would that also be a paragraph that
2 is -- I would call a template or boilerplate
3 language that's included in most Water Quality
4 Certifications?
5 A. Are you looking at the paragraph
6 or a condition, Mr. Ludder?
7 Q. I'm sorry. I guess the
8 paragraph -- second-to-last paragraph, starting
9 with, Issuance of a certification?
10 A. That's -- yeah, that comes out of
11 a boilerplate.
12 MR. LUDDER: Okay. No further
13 questions.
14 HEARING OFFICER: Cross?
15 CROSS-EXAMINATION
16 BY MR. CARTER:
17 Q. If you would, in front of you is
18 Respondent's Exhibit R-3.
19 A. Okay.
20 Q. If you would, take a look at that,
21 please. Now, turn on over to the tab,
22 that -- if you would, identify that.
23 A. You have the certification with

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1 special conditions.

2 Q. Okay. And now, attached to that

3 particular document that we've entered right

4 there, there's a lot more information. And is

5 that information -- I think you referenced a

6 while ago in your review -- would that be

7 information you used in your review of this?

8 A. Correct. That would be the

9 applicant's response to the letter.

10 Q. Okay. And I think -- we've been

11 calling it "Water Quality Certification," but I

12 think really it's "Water Quality Certification

13 with Special Conditions"?

14 A. Correct.

15 Q. What's meant by "Special

16 Conditions"?

17 A. Those are the numbered conditions

18 that we put in there to make sure that the

19 project does not impact the Water Quality

20 Certifications that the State has laid out.

21 Q. And are -- we request that those

22 be added into the permit by -- issued by the

23 Corps?

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1 A. This is issued to the applicant,

2 but it is normally inserted into the Corps of

3 Engineers' permit as conditions that they have

4 to go by.

5 MR. CARTER: Okay. Nothing

6 further.

7 HEARING OFFICER: Mr. White?

8 MR. WHITE: No, sir.

9 HEARING OFFICER: Redirect?

10 MR. LUDDER: None.

11 HEARING OFFICER: May this Witness

12 be excused?

13 MR. DAVIS: Yes, sir.

14 HEARING OFFICER: And excused from

15 the rule?

16 MR. DAVIS: Yes, sir.

17 HEARING OFFICER: You're free to

18 go.

19 THE WITNESS: Thank you.

20 MR. LUDDER: Your Honor, may I have

21 ten minutes to assess my case and

22 think about other witnesses?

23 HEARING OFFICER: Absolutely.

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1 Let's be in recess until approximately

2 4:00. I'll give you a little leeway

3 on that if you need to.

4 MR. LUDDER: Thank you.

5 (A brief recess was taken.)

6 HEARING OFFICER: Let's go back on

7 the record and state that. All right.

8 It is 4:05 on Tuesday [verbatim], June

9 1st.

10 Mr. Ludder, are you ready for

11 another witness?

12 MR. LUDDER: We have another

13 scheduled witness, but it's scheduled

14 at a later time, because she is

15 unavailable.

16 HEARING OFFICER: All right. And

17 we discussed that y'all had agreed

18 that Glenda Dean would testify when

19 she became available. I believe she's

20 on vacation, or something of that

21 nature.

22 MR. LUDDER: That's right.

23 HEARING OFFICER: All right. Based

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1 on that, and based on our discussion,

2 I'm going to recess for the day and

3 expect for the Department to present

4 their case beginning at 9:00 a.m.

5 tomorrow with whatever witnesses you

6 want to call. And, Mr. White, if you

7 will be prepared after that to present

8 the Intervenor's case, hopefully,

9 we'll be able to complete all that

10 testimony by tomorrow and then come

11 back with Ms. Dean as a witness and

12 whatever rebuttal-type evidence we

13 need to present. Is that everybody's

14 understanding?

15 MR. CARTER: Yes, sir.

16 MR. LUDDER: Yes, sir.

17 MR. WHITE: Yes, sir.

18 HEARING OFFICER: All right. With

19 that, we'll be in recess until

20 9:00 a.m. tomorrow. Thank you.

21 (Whereupon, the hearing

22 adjourned at 4:06 p.m.)

23 * * * * *

1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA

3 MONTGOMERY COUNTY

4 I, Patrick Miller, Alabama Certified

5 Court Reporter No. 2037, and Commissioner for

6 the State of Alabama at Large, hereby certify

7 that on Wednesday, June 1st, 2016, I reported

8 the TESTIMONY AND PROCEEDINGS in the matter of

9 the foregoing cause, and that the pages herein

10 contain a true and accurate transcription of

11 said proceedings.

12 I further certify that I am neither kin

13 nor of counsel to the parties to said cause, nor

14 in any manner interested in the results thereof.

15 This 12th day of June, 2016.

16

17

18

19

20 PATRICK MILLER, ACCR-2037

Commissioner for the

State of Alabama at Large

21 MY LICENSE EXPIRES: 8/24/16

22 MY COMMISSION EXPIRES: 2/19/19

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